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Calendar No. 149

89TH CONGRESS }
1st Session }

SENATE

{
REPORT
No. 162

1694-

VOTING RIGHTS LEGISLATION

APRIL 9 (legislative day, APRIL 8), 1965.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 1564]

The Committee on the Judiciary, to which was referred the bill (S. 1564) to enforce the 15th amendment of the Constitution of the United States, having considered the same, reports the bill in conformity with instruction of the Senate, with amendments in the nature of a substitute, and without recommendation.

STATEMENT

By order of the Senate, agreed to March 18, 1965, S. 1564, to enforce the 15th amendment to the Constitution of the United States, was referred to the Committee on the Judiciary, with instructions to report it back to the Senate not later than April 9, 1965.

The committee conducted public hearings on March 23, 24, 25, 29, 30, and 31, and April 1, 2, and 5, 1965.

The committee met in executive session on April 6, 7, 8, and 9, 1965, considering the bill.

The committee considered numerous amendments. The amendments agreed to by the committee are set forth in the bill as reported to the Senate.



1694-

VOTING RIGHTS LEGISLATION

APRIL 20, 1965.—Ordered to be printed
Filed under authority of the order of the Senate of April 9, 1965

Mr. EASTLAND (for himself, Mr. McCLELLAN, and Mr. ERVIN), from
the Committee on the Judiciary, submitted the following

INDIVIDUAL VIEWS

[To accompany S. 1564, to enforce the 15th amendment of the Constitution of
the United States]

We, the undersigned, adopt the following statements of the Honorable Charles J. Bloch and the Honorable Thomas H. Watkins as our individual views on S. 1564.

JAMES O. EASTLAND.
JOHN L. McCLELLAN.
SAM J. ERVIN, Jr.

MEMORANDUM FOR DISCUSSION OF S. 1564 (H.R. 6400)
BEFORE JUDICIARY COMMITTEE OF THE U.S. SENATE,
MARCH 29, 1965

Mr. Chairman, Senators, since 1957, I have had the honor and privilege of appearing several times before the Judiciary Committee on subjects kindred to that of this bill.

During those years the personnel of the committee has changed considerably. Therefore, it may not be amiss for me to tell the committee that I was admitted to the bar in Macon, Ga., in 1914. I have practiced law there consecutively since. The firm of which I am now senior member is a direct successor to that with which I commenced "reading law" 52 years ago. During those years, I have held every office in the Georgia Bar Association, including the presidency. I have been chairman of the Judicial Council of Georgia, and am now chairman of the Rules Committee of the Supreme Court of Georgia. At one time I was chairman of the American Bar Association's Committee on Judicial Selection, Tenure, and Compensation, and at other times a member of its committees of Jurisprudence and Law Reform, and on the Federal Judiciary.

I am a member of the American College of Trial Lawyers, and of the American Bar Foundation.

I tell you this personal history so that those of you who are personally strangers to me will know that I would not without serious study and consideration express to you the opinion which I shall today express.

Over the years, I have had the opportunity to study academically the subject matter of these bills; have also had the opportunity of trying cases involving a great many of the principles here involved.

When the Congress enacted the civil rights bill of 1957, I was of counsel for those who attacked it as unconstitutional. The District Court for the Middle District of Georgia (Judge T. Hoyt Davis) declared it unconstitutional (172 F. Supp. 552). The Government appealed directly. The case was argued before the Supreme Court by Attorney General Rogers and me. That case, *Sub nomine United States v. Raines* (362 U.S. 17), was mentioned by Attorney General Katzenbach in his appearance before the House committee on March 18, 1965. The Supreme Court of the United States reversed Judge Davis as to the vital point there at issue, to wit: the proper application of *United States v. Reese* (92 U.S. 214). The Court refused to follow Judge Davis' construction of the *Reese* case.

It is noteworthy that last June in the *Aptheker* case (84 S. Ct. 1661(20)) (37 U.S. —) a majority of the Court speaking through Mr. Justice Goldberg held that in appraising a statute's inhibitory effect upon personal liberties, the court can take into account possible applications of the statute in other factual contexts beside the ones at issue in the cases at bar. Therefore, a section of the Subversive Activities Control Act making it a felony for a member of a Communist organization to apply for, use, or attempt to use, a passport is unconstitutional on its face.

I also had the honor and privilege of representing the chairman of the Democratic Committee of Georgia, John Sammons Bell, now a judge of the Georgia Court of Appeals, the last time Georgia was successful before the Supreme Court of the United States in resisting an attack on her nominating system known as the county unit system (*Hartsfield v. Sloan*, 357 U.S. 916).

Then, questions of that nature were still considered to be political questions. The Court had not entered the political thicket.

I am here to express my opinion for what it may be worth to you on the validity, as a matter of law, of the bill before you. I shall endeavor to support that opinion by established principles of constitutional law—which, we are told, should be the "law of the land."

Were I a judge, I would attempt to approach the questions involved bearing in mind the views expressed by the late Justice Frankfurter in *West Virginia State Board of Education v. Barnette* (319 U.S. 646-647):

One who belongs to the most vilified and persecuted minority in history is not likely to be insensible to the freedoms guaranteed by our Constitution. Were my purely personal attitude relevant I should wholeheartedly associate myself with the general libertarian views in the Court's opinion, representing as they do the thought and action of a life time. But as judges we are neither Jew nor Gentile, neither Catholic nor agnostic. We owe equal attachment to the Constitution and are equally bound by our judicial obligations whether we derive our citizenship from the earliest or the latest immigrants to these shores. As a member of this Court I am not justified in writing my private notions of policy into the Constitution, no matter how deeply I may cherish them or how mischievous I may deem their disregard.

It occurs to me that you and I must approach the problem from the standpoint. You, as Senators; I, as a lawyer, took substantially the same oath.

As a member of the same faith as the late Justice I have this personal interest, too. Over the years, I have struggled against stretching and distortions of our Constitution. I sincerely believe that the only hope any American, certainly any minority, has for survival is in strict construction of and obedience to our written Constitution. If, today, those in power can stretch and distort the Constitution favorably to a minority, tomorrow, another and adverse group, risen to power, can stretch and distort it to destroy that minority.

So, isn't the first basic problem for us to decide whether or not in all respects this bill squares with the 15th amendment?

That amendment is:

1. The right of the citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

2. The Congress shall have power to enforce this article by appropriate legislation.

The sole power given to Congress by that amendment, the only appropriate legislation which can be enacted pursuant to it, is to prevent the United States or any State from denying certain people the right to vote on account of their race or color.

That amendment does not confer the right upon Congress to confer upon any one the right to vote.

The 15th amendment was declared ratified March 30, 1870; the 14th had been declared ratified July 28, 1868. The 14th contained a provision:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States * * *

At that time the constitution of the State of Missouri provided: "Every male citizen of the United States shall be entitled to vote."

On October 15, 1872, Mrs. Virginia Minor, a native born, free, white citizen of the United States and of Missouri, over the age of 21, wishing to vote for presidential electors, sought to register to vote. Being denied that privilege, she brought legal action contending that the Missouri laws confining the right of suffrage to men were void. The argument was that as Mrs. Minor was a citizen, she had the right of suffrage as one of the privileges and immunities of citizenship which the State could not abridge.

In deciding against Mrs. Minor the Court held that all citizens are not necessarily voters; the United States has no voters in the States of its own creation; the elective officers of the United States are all elected directly or indirectly by State voters; the Members of the House of Representatives are chosen by the people of the States, and the electors in each State must have the qualifications requisite for electors of the most numerous branch of the State legislature. (Constitution, art. I, sec. 2.)

Minor v. Happersett (88 U.S. (21 Wallace) 162, 170-171)

Then, as now, no citizen regardless of sex or color has any right under the Constitution of the United States to vote for electors who, in turn, elect the President and Vice President. Each State, under the Constitution (art. II, sec. 2) must *appoint* those electors in such manner as the legislature thereof may direct. (Ibid., p. 171.)

On page 171, the Court, speaking through Mr. Chief Justice Waite, used this cogent language:

It is clear, therefore, we think that the Constitution has not added the right of suffrage to the privileges and immunities as they existed at the time it was adopted.

All that was said with respect to the 14th amendment.

The impact of it here is that when the 15th amendment was adopted it did not deprive the States of their constitutional power to determine who had the "right to vote" under article I, section 2, or any other provision of the Constitution. It simply prevents the States from using the laws it passes so as to deny or abridge the colored person's right to vote. It does not empower the Congress to supersede those laws by enacting statutes to replace them when they are used to abridge or deny.

As *Minor v. Happersett* (at p. 173) clearly points out in some detail, when the Federal Constitution was adopted, in no State were all citizens permitted to vote. "Each State determined for itself who should have that power."

To illustrate, at the time of the adoption of the Constitution the law of Connecticut was that to be a voter a person had to be one who

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had "maturity in years, quiet and peaceable behavior, a civil conversation, and 40 shillings freehold or 40 pounds personal estate" (88 U.S. 172; New York's of that day is equally interesting, *ibid.*).

Suppose that were still the law of Connecticut, and suppose it were so administered by the State's officers as to violate the 15th amendment, so as to deprive a person of his right to vote by reason of his race or color, do you for one minute think that the Congress would have the constitutional power to wipe that law off of the statute books of Connecticut, and substitute its own notions of what Connecticut citizens had the right to vote?

The 15th amendment was simply not intended to confer upon the Congress the power to enact as "appropriate legislation" legislation determining the qualifications of voters in any State, or group of States, regardless of whether or not that State or those States had violated the 15th amendment. The Federal courts can prevent such violation. Neither the Congress nor the courts can enact laws to replace the offending laws.

Every case on the subject decided from 1870 to this date teaches the correctness of that statement.

"The power of Congress to legislate at all upon the subject of voting at State elections rests upon" the 15th amendment. It "does not confer the right of suffrage, but it invests citizens of the United States with the right of exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude, and empowers Congress to enforce *that right* by appropriate legislation."

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United States v. Reese, et al. (93 U.S. 214 (1875))

In *Minor v. Happersett* (21 Wallace 178), this Court decided that the Constitution * * * has not conferred the

right of suffrage upon any one, and that the United States have [sic] no voters of their [sic] own creation in the States. In *United States v. Reese et al.*, *supra* (p. 214), it held that the 15th amendment has invested the citizens of the United States with a new constitutional right, which is exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude. The right to vote in the States comes from the States; but the right of exemption from the prohibited discrimination comes from the United States. The first has not been granted or secured by the Constitution of the United States, but the last has been.

United States v. Cruikshank (92 U.S. 542)

Even a territory (Idaho) in 1890 had the right through its territorial legislature to provide that no person who taught or advised bigamy or polygamy, or to enter into plural or celestial marriage, or who was a member of any order or organization which so taught should be permitted to vote.

Davis v. Beason (133 U.S. 333 (1890))

Under the second clause of article II of the Constitution, the legislatures of the several States have *exclusive power* to direct the manner in which the electors of President or Vice President shall be appointed. Such appointment may be made by the legislatures directly, or by popular vote in districts, or by general ticket, *as may be provided by the legislature*. * * * The second clause of article II of the Constitution was not amended by the 14th and 15th amendments, and they do not limit the power of appointment to the particular manner pursued at the time of the adoption of these amendments, or secure to every male inhabitant of a State, being a citizen of the United States, the right from the time of his majority to vote for presidential electors.

McPherson v. Blacker (146 U.S. 1 (1892)) [Emphasis added]

The Constitution "recognizes that the people act through their representatives in the legislature, and leaves it to the legislature *exclusively* to define the method of effecting the object" [of appointing electors]. (Ibid., p. 27.)

The doctrine of *Cruikshank* and *Reese* was explicitly reaffirmed. (Ibid., p. 38.)

Guin and Beal v. United States (238 U.S. 347 (1915)) was decided by a Court over which Chief Justice White presided. Among his Associates were Justices Oliver Wendell Holmes, William R. Day, of Ohio, Charles Evans Hughes, of New York, Mahlon Pitney, of New Jersey.

This case should be most carefully considered because of it, and its companion, *Myers v. Anderson* (238 U.S. 368), the Attorney General stated before the House committee on March 18 last:

The "grandfather clauses" of Oklahoma and Maryland were, of course, voting qualifications. Yet they had to bow before the 15th amendment. (Manuscript, p. 39.)

To what extent did the provisions of the Oklahoma constitution have to "bow"? They had to "bow" to the extent of being *elim-*

nated, but it was not even contended by the United States that the Congress of the United States could enact something in their stead. (See 238 U.S. 351.) The language of the Court clearly indicates that no such power would have been implied from the words of the 15th amendment.

The Fifteenth Amendment does not, in a general sense, take from the States the power over suffrage possessed by the States from the beginning, but it does *restrict* the power of the United States or the States to abridge or deny the right of a citizen of the United States to vote on account of race, color or previous condition of servitude. While the 15th amendment gives no *right of suffrage*, as its command is self-executing, rights of suffrage may be enjoyed by reason of the *striking out of discriminations* against the exercise of the right. (Op. cit., p. 347.) [Emphasis added.]

What the Court did there was to nullify the "grandfather clause" (h.n. 1) and to declare that *ipso facto* the 15th amendment had stricken the word "white" from the phrase "white male citizen" in the Oklahoma law.

In so doing (op. cit., p. 363) the Court followed much older cases: *Ex parte Yarbrough* (110 U.S. 651, 665), *Neal v. Delaware* (103 U.S. 370 (1880)).

In 1959, *Guin*, as well as *Pope v. Williams* (193 U.S. 821), *Mason v. Missouri* (179 U.S. 328), were cited in support of the propositions that a State "may * * * apply a literacy test to all voters irrespective of race or color" and that the "States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised."

Lassiter v. Northampton County Board of Elections (360 U.S. 45, 50)

In that case, Justice Douglas, writing for a unanimous court, said:

So while the right of suffrage is established and guaranteed by the Constitution * * * it is subject to the imposition of State standards which are not discriminatory and which do not contravene any restriction that Congress acting pursuant to its constitutional powers has imposed (op. cit., p. 51).

The theory of this bill and of the Attorney General is that if in the opinion of Congress a State imposes standards which are discriminatory, or applies legal standards (test and devices) discriminatorily, Congress may by statute divest that State of its constitutional powers of determining the conditions upon which the right of suffrage may be exercised; may substitute its own conditions, and may do all of that retroactively.

The Constitution gives the Congress no such power over any State of this Union, North or South, East or West, Republican or Democrat.

The Attorney General at page 39 of the manuscript of his testimony correctly quotes from Justice Frankfurter's opinion in *Gomillion v. Lightfoot* (364 U.S. 339, 347).

From that case, too, it appears that the Court decided that if a local act of the Alabama Legislature redefining the corporate boundary of Tuskegee had as its purpose the removing from that city all but 4 or 5 of its 400 negro voters while not removing a single white voter or resident, with the result of depriving such negroes of benefits of

residence in the city including the right to vote in municipal elections, such act would be void as violative of the 15th amendment.

If that act, or any act like it, were found to be void, would it follow that Congress could, therefore, deprive the Alabama Legislature of all future power to create municipal corporations?

If such be the law, then Congress, under the guise of enforcing the 14th and 15th amendments, has power to strip any State legislature of every vestige of its legislative power.

If, for example, a statute defining and punishing murder should be so administered so as, in the opinion of Congress, to deprive certain groups of the equal protection of the laws, then Congress would have the right not only to nullify that statute but to enact one to supplant it, and send federal officers or agents into the State to enforce it.

Nothing in any case ever decided by the Supreme Court of the United States even hints at any such power which, if it exists, would place it in the power of the Federal Government to destroy the States which created it.

The three most recent cases cited by the Attorney General are *Alabama v. United States* (371 U.S. 37), *United States v. Mississippi* (33 L.W. 4258 (Mar. 8, 1965)), *Louisiana v. United States* (33 L.W. 4262 (Mar. 8, 1965)).

The Alabama case is a per curiam case based on *United States v. Thomas* (362 U.S. 58), which simply followed and applied the *Raines* case, *supra*.

Nothing in the *Mississippi* case, *supra*, or the *Louisiana* case, *supra*, even hint at such a power in Congress, impliedly conferred by the 15th amendment.

Even if there were direct, uncontradicted proof that the election officials were under direct State authority purposely and universally using valid literacy tests ("tests and devices") to deny the right of Negroes to vote, such would not authorize the Congress to annul those valid literacy tests and enact laws supplanting the State's laws, or even to annul those valid literacy tests.

A fortiori, Congress has no such power when the so-called "guilt" of a State or subdivision is based on a presumption or presumptions.

And even the more strongly, Congress has no such power when the presumptions are based on conclusions reached by the application of an arbitrary percentage which is a part of such presumption to an arbitrary past date.

In the first place such a method of procedure is violative of article I, section 9, paragraph 3, of the Constitution which provides: "No Bill of Attainder or ex post facto Law shall be passed."

Legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial are "bills of attainder" prohibited by this clause.

United States v. Lovett (328 U.S. 303)

A bill of attainder is defined to be "a legislative act which inflicts punishment without judicial trial where the legislative body exercises the office of judge, and assumes judicial magistracy, and pronounces on the guilt of a party without any of the forms or safeguards of a trial and fixes the punishment."

In re De Giacomo (7 Fed. Cases No. 3747); see *Cummings v. Missouri* (4 Wallace 277, 323), *Ex parte Garland* (4 Wallace 333)

In the *Cummings* case, it was held that a State, under the form of creating a qualification or attaching a condition could not in effect inflict a punishment for a past act which was not punishable at the time it was committed. Deprivation or suspension of any civil rights for past conduct is punishment for such conduct. There a Missouri statute, which sought to bar Reverend Mr. Cummings, a priest of the Roman Catholic Church, from teaching and preaching by reason of his past allegiance to the Confederacy, was declared invalid.

In *Ex parte Garland*, supra, the Court said:

Exclusion from the practice of law in the Federal courts, or from any of the ordinary avocations of life for *past conduct* is punishment for such conduct. * * * The act being of this character partakes of the nature of a bill of pains and penalties, and is subject to the constitutional inhibition against the passage of bills of attainder. * * *

The Garland of that case decided in 1866 was A. H. Garland, Esq., who afterward (1885-89) became an Attorney General of the United States.

An *ex post facto* law is one which imposes a punishment for an act which was not punishable at the time it was committed, or a punishment in addition to that then prescribed.

Burgess v. Salmon (97 U.S. 384); see also *U.S. v. Trans-Missouri Freight Ass'n.* (166 U.S. 290)

In the light of these cases, of many others of like nature which could be cited, and of others which will be hereinafter cited, pass on to an examination of section 3(a) of this bill.

Section 3(a) is:

No person shall be denied the right to vote in any Federal, State or local election because of his failure to comply with any test or device, in any State or in any political subdivision of a State which—

(1) the Attorney General determines maintained on November 1, 1964, any test or device as a qualification for voting, and with respect to which

(2) the Director of the Census determines that less than 50 percent of the persons of voting age residing therein were registered on November 1, 1964, or

that less than 50 percent of such persons voted in the presidential election of November 1964.

The phrase "test or device" is defined in section 3(b); the phrase is practically synonymous with what the courts have been denominating as "literacy tests," or "conditions under which the right of suffrage may be exercised."

I do not appear here for the State of Georgia. I am not an officer of the State of Georgia. Because of being practically a lifelong resident of the State of Georgia I am more familiar with the facts there than I am with those of any other State. The effect of those provisions can be better understood if they are applied to a real, factual situation, so I apply them to Georgia.

We know, of course, that we do have statutes creating voting tests such as those held to be valid in the *Northampton County* case, *supra*.

We know, too, that in the Attorney General's testimony before the House committee, *supra* (p. 31), he said:

I turn now to the information we have regarding the impact of section 3(a). Tests and devices would be prohibited in Louisiana, Mississippi, Alabama, Georgia, South Carolina, Virginia, and Alaska, 34 counties in North Carolina, and 1 county in Arizona. Elsewhere, the tests and devices would remain valid, and similarly, the registration system would remain exclusively in the control of State officials.

So, the United States of America would be divided into two groups—the good and the bad—if you please.

The “good”—41 States and a portion of 2 others, could go on exercising their rights and freedoms, and enforcing their statutes.

The “bad”—seven and a portion of those two others—could not.

(It is striking that of the bad seven, the electoral votes as a result of the 1964 election of five of them were cast for the Republican candidate and save for his home State were the sole five.)

Now, as to Georgia, I do not know whether out law as to voting qualifications would be swept aside because by the edict of the Director of the Census because of the supposition that 50 percent of *all* persons of voting age residing in Georgia were not registered on November 1, 1964, or because of the supposition or fact that less than 50 percent of all persons of voting age residing in Georgia did not vote in the presidential election of 1964.

Based on one or both of those states of fact, the Congress of the United States would be adjudicating that Georgia is *now* guilty of abridging or denying the rights of Negroes to vote on account of their race or color.

And what would be the basis or bases of such an adjudication? Either one or two.

One might be, 50 percent of *all* persons of voting age residing in Georgia were not registered 6 months ago on November 1, 1964, so from that we presume that you denying or abridging the right—not of all persons in your State, but of Negroes to vote.

The other, and the only other, would be or might be: 50 percent of all persons of voting age residing in Georgia did not vote in the presidential election of November 1964 (which, by the way, our legislature was not compelled under the Federal Constitution or statutes to hold) so we from that presume that you are denying or abridging the right—not of all persons in your state, but of Negroes to vote.

Whichever “determination” of the Director of the Census may be used, the consequences on Georgia and the impact on her laws is equally unjustified, invalid, and not justified by any principle of constitutional law heretofore known.

In my suppositions, I have used Georgia as the example. The determination and the result in any other State would be just as invalid.

The dates are purely arbitrary.

The percentage used is equally arbitrary.

The events are purely arbitrary.

The supposed result from the facts determined is purely arbitrary.

The testimony of the Attorney General (p. 31) shows just how arbitrary the "triggering" is. Said he:

The premise of section 3(a), as I have said, is that the coincidence of low electoral participation and the use of tests and devices results from racial discrimination in the administration of the tests and devices. That this premise is generally valid is demonstrated by the fact that of the six States in which tests and devices would be banned statewide by section 3(a), voting discrimination has unquestionably been widespread in all but South Carolina and Virginia, and other forms of racial discrimination, suggestive of voting discrimination, are general in both of these States.

The New York Times of March 18 editorially said of the "drafters" of this bill in the Justice Department:

But they have been both *inventive* and inexorable in providing machinery to keep those standards from being imposed "to deny or abridge the right to vote on account of race or color." In the six Southern States where less than half the voting population participated in the last presidential election, *presumption of past discrimination will be automatic, and no literacy or other qualifying test will be allowed to bar anyone from the ballot box in Federal, State, or local elections.* [Emphasis added.]

That same Constitution which is held to guarantee freedom to the owners of the New York Times to make money by printing what they please, guarantees to every State of this Union, the people of every State of this Union—including the "six Southern States"—the right to be free from the tyrannical provisions sought to be imposed on the basis of "presumptions."

Before I proceed to discuss the law of such presumptions, I wonder why 50 percent is the figure used for participation in presidential elections. My information is that in Arkansas the participation was 50.1 percent; Kentucky, 52.6 percent; Tennessee, 51.2 percent. So you have the result: Arkansas in which 50.1 percent participated may use voting tests; Georgia in which, say, 49.9 percent participated, may not.

The presumption arising from the one percentage is no more valid than the counter presumption arising from the other.

In Georgia there are 159 counties. My home county of Bibb with a total population (not merely persons of voting age) in 1960 of 141,249, had 54,872 voters registered as of November 1, 1964, which is doubtless more than 50 percent of the persons of voting age residing therein. According to the official records of Bibb County (Georgia), 46,883 registered voters cast their ballots in the presidential elections of November 1964.

Section 3(a) is quite ambiguous, despite the fact that the Supreme Court of the United States directs that "precision must be the touchstone of legislation so affecting basic freedoms (*NAACP v. Button*, 371 U.S. 438, 83 S. Ct. 340; *Aptheker v. Secretary of State*, 84 S. Ct. 1659, 1668). I can imagine no greater basic freedom than that of a State and the people of a State specifically reserved by the 10th amendment.

Section 3(a) lacks that precision. Suppose more than 50 percent of persons of voting age residing in Bibb County (or any other county) and more than 50 percent of such persons voted in the presidential elections of November 1964; suppose, further, that those facts do not hold true for the State of Georgia as a whole, may Bibb County continue to use voting tests?

Suppose, further, that more than 50 percent of persons of voting age residing in the State of Georgia (or any other State) and more than 50 percent of such persons voted in the presidential election of 1964; suppose, further, that those facts do not hold true for a certain county or counties of the particular State; will the whole State be deprived of the use of voting tests because one, two, or even a majority of the counties do not conform to the arbitrary criteria set up in section 3(a)?

I recall an elder statesman once saying that you could not indict a whole people.

Particularly in the States of Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia the participation in presidential elections of less than 50 percent of persons of voting age residing therein is no criterion whatsoever of discrimination of any kind.

It is only recently that citizens of those States, regardless of color, have seen fit to participate in presidential elections to any extent. To illustrate (before I give you the reasons), look at these figures:

Votes in presidential elections

(in thousands)

	1912	1920	1960	1964
Alabama.....	116	241	528	653
Georgia.....	130	150	723	1,183
Louisiana.....	79	126	807	808
Mississippi.....	65	83	208	409
South Carolina.....	50	61	337	325
Virginia.....	196	230	1,245	1,156

To demonstrate that the trend upward of those figures is not confined to those six states, I include—

	1912	1920	1960	1964
Texas.....	293	485	2,312	2,609

You will see even from those approximate figures the total votes in those six States in 1964 were about seven times the total of 1912. That figure applies to Texas as well.

The principal reason for it is that up until about 1948, we were the "Solid South"; we were the backbone of the Democratic Party; it was taken for granted that we would vote the Democratic ticket so that in presidential elections we contented ourselves (up to 1936, anyway) with having a real voice in the nomination of the party's candidate, and then let the rest of the country fight it out in the election. Up to 1948 we didn't bother to vote in presidential elections, or if we did we simply voted Democratic. In 1948, the trend began to change. We discovered, after 12 years, that we no longer had any voice in the

nomination, so we had better go to voting in the election. So you will find a marked increase after 1948 in the number of votes cast. But, there still remain some who do not vote in the presidential elections either because they haven't become accustomed to the new situation, or because rather than not vote Democratic, they won't vote at all.

The Attorney General testified (p. 31) that the validity of his premise is demonstrated by what he calls the fact that of the six States named, "voting discrimination has unquestionably been widespread in all but South Carolina and Virginia and other forms of racial discrimination, suggestive of voting discrimination, are general in both of those States."

I wish I had the power to compel the Attorney General to prove his statement that voting discrimination has unquestionably been widespread in four of those six States—particularly as to Georgia would I like to see him try to prove it. And if he proved it I would wonder why the Department of Justice really hasn't used the tools that Congress has given it over the past 7 years. Oh, I have read what he had to say about the delays in some of the Federal courts of those four States, particularly in two of them. But my own observation from reading and experience is that the U.S. Court of Appeals for the Fifth Circuit brooks no delay in the trial of any case unless there is good reason for it.

In 1957, Congress enacted a "civil rights" law embodying voting provisions which was declared constitutional in the *Raines* case, supra. In 1960, it strengthened it. In 1964, it enacted another one. Since 1957, certainly, the Attorney General of the United States has had the authority to institute a civil action for preventive relief whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any person of his 15th amendment rights. Since 1960, he may make the States parties defendant in such proceedings (42 U.S.C.A. 1971). Such suits are brought in the Federal courts which may appoint voting referees in certain instances (*ibid.*, sec. 1971e).

In the six States most grievously affected by this bill—

Alabama has (counties).....	67
Georgia has (counties).....	159
Louisiana has (parishes).....	84
Mississippi has (counties).....	82
South Carolina has (counties).....	46
Virginia has (counties).....	98
Total.....	416

Therefore, there are 416 counties or political subdivisions as to which the Attorney General says "voting discrimination has unquestionably been widespread."

In how many of these counties has the Department of Justice instituted suits in the last 8 years? In how many of these suits has the Court found a "pattern and practice" of discrimination authorizing the appointment of Federal referees?

One of two States of facts is unquestionably true. There is no widespread discrimination forbidden by the 15th amendment, or the Department of Justice has, purposefully or neglectfully, been lax in the exercise of the processes at its disposal which would remedy such widespread discrimination if it in fact existed.

Maybe the truth of the matter is that present acts of Congress do not, as Circuit Judge Wisdom points out in *United States v. Manning* (215 F. Supp. 272), purport to fix qualifications of voters or to give that right to any Federal judge. They simply protect the rights of voters, *qualified under State law*, to participate in elections (op. cit., p. 285).

No wonder that the acts do no more for up to now it has been conceded that that is all the 15th amendment does. But, now, Congress is urged to go over and beyond the 15th amendment—to do more than protect the rights of voters qualified under State law, and to determine who shall be qualified, not under State law, but under the terms of the act it passes.

What is really troubling the Department of Justice and the "civil rights" people is that there is really no such widespread violation of the 15th amendment as will justify Federal action under it, so they want Congress to presume such violation.

They cannot meet the constitutional guidelines set up by the courts, so they want different guidelines which are not warranted by the Constitution.

The present guideline, declared by the Federal courts to be warranted under the Constitution and appropriate statutes is:

If a pattern or practice of discrimination is found (under sworn evidence in an action in a proper court), the court is empowered to declare persons entitled to vote who have been judicially found to have been deprived of voting rights on account of race or color. If the Federal court finds, from the evidence before it, such pattern or practice of discrimination, those who have been subjected to discrimination are entitled to an order declaring them entitled to vote.

Such was the pronouncement of the U.S. Court of Appeals for the Fifth Circuit on July 21, 1964, in *United States v. Fox* (334 F. 2d 449), following the principle which that same court had several times stated. (See cases cited in footnote 10, 334 F. 2d 453.)

The panel which decided the *Fox* case was composed of Circuit Judges Rives and Jones, and District Judge Bootle. Certainly the Department of Justice cannot accuse either one of those eminent judges of "tarnishing" our judicial system "by evasion, obstruction, delay, and disrespect." (Testimony before House committee, p. 11.)

The premise is false.

But even if the premise were true, it would by no means follow that Congress would be constitutionally authorized to give the premise the effect sought by this bill.

I must assume that a State or a political subdivision is entitled to constitutional consideration of the same degree as any one of its citizens or as any one within its jurisdiction.

The "main fact in issue" is whether the 15th amendment is being violated by certain States, political subdivisions, or officers.

The Congress is asked to declare that if the Director of the Census determines either that 50 percent of the persons of voting age residing in a given State or political subdivision were not registered on November 1, 1964, regardless of whether they sought registration or not, or that 50 percent of such persons did not vote in the presidential election of 1964, that State or political subdivision is presumed to be now in violation of the 15th amendment.

While States may, without denying due process of law, enact that proof of one fact shall be *prima facie* evidence of the main fact in issue, the inference must not be purely arbitrary; there must be rational relation between the two facts, and the accused must have proper opportunity to submit all the facts bearing on the issue.

Bailey v. State of Alabama (219 U.S. 219)

The "accused" here are all of the States and political subdivisions of the United States.

While the "accused" may seem to be just a few southern States, and while the other 44 may be tempted to stand mute and think, "Let those southerners squirm," I warn you that if this bill passes, and is declared constitutional, then by the same device and with the same argument which Mr. Katzenbach used before the House committee, the criminal statutes, the jury statutes, taxing statutes of every State of this Union may be swept aside.

So I respectfully request that not only the six States which seem here to be mainly affected, but all of the States give heed to what the Department of Justice is trying to do.

The inference it seeks to draw is purely arbitrary; there is no rational relation to the premise, even if it be a fact, and the ultimate fact in issue; the accused does not have *proper* opportunity to submit all the facts bearing on the issue. There is absolutely no opportunity afforded the State or political subdivision to submit any fact bearing on the issue prior to the impact of the decision, resulting from the use of the presumption.

(Parenthetically I do not know how anyone can now tell how many Negroes are registered or how many voted in a given political subdivision or a given election. "The keeping of separate registration and voting records for whites and Negroes according to race" is subject to Federal injunction (*United States v. Raines*, 189 F. Supp. 121, 133(3); *Anderson v. Courson*, 203 F. Supp. 806)).

One of the salient inquiries which would have to be made as to a low registration in any given political subdivision would necessarily be: How many attempted to register and were denied the privilege? The mere fact of nonregistration of a given percentage without division between races, and without any reason assigned for the nonregistration, and without any showing of attempts to register, proves nothing.

Applicable, too, is the case of *Manley v. State of Georgia* (279 U.S. 1), wherein the court held that a presumption created by the Georgia Banking Act to the effect that every insolvency of a bank should be deemed fraudulent as to the president and directors was violative of the Federal Constitution in that the presumption created thereby was unreasonable and arbitrary, as pointing to no specific transaction, matter, or thing as the cause of the fraudulent insolvency, or to any act or omission of the accused tending to show his responsibility. Furthermore, the Court said that a law creating a presumption which operates a fair opportunity to repel it violates the Constitution.

It is not within the province of a legislature to declare an individual guilty or presumptively guilty of a crime.

McFarland v. American Sugar Co. (241 U.S. 79, 86)

In *Western & Atlantic R. Co. v. Henderson* (279 U.S. 639), the Supreme Court applied the principle of the *Manley* case, *supra*, to a statute of Georgia in a civil case. The Court held that a section of the Georgia Code which raised a presumption of negligence against a railroad in an action for damages, construed as raising presumption, on mere fact of grade crossing collision and resulting death of occupant of automobile, that railroad and its employees were negligent and without other evidence of negligence permitting presumption to be considered as evidence against defendant's evidence tending affirmatively to prove that operation of train was not negligent was unconstitutional.

Legislative fiat may not take the place of fact in the judicial determination of issues involving life, liberty or property (*ibid.*, p. 642).

A fortiori, legislative fiat may not take the place of fact in the determination of whether a State of this Union has violated the provisions of the 15th amendment to the Constitution.

In *Tot v. United States* (319 U.S. 463, 467), the Court explained what it meant by a "rational connection." There it declared a "presumption" invalid.

Barrett v. United States (322 F. 2d 292), a decision of the Fifth Circuit Court of Appeals held unconstitutional a statute creating presumptions of defendant's possession of still and carrying on business of distiller on showing of defendant's unexplained presence at the stillsite (1963, Circuit Judges Tuttle, Wisdom, and District Judge Johnson).

This case was reviewed by the Supreme Court in a decision of March 1, 1965, *Sub nomine, United States v. Gainey* (33 L.W. 4200). The Supreme Court (7 to 2) reversed the court of appeals and held the statute to be valid. The rationale of the opinion, holding that there was a rationality in the connection "between the fact proved and the ultimate fact assumed." The support for the holding was:

Congress was undoubtedly aware that manufacturers of illegal liquor are notorious for the deftness with which they locate arcane spots for plying their trade. Legislative recognition of the implications of seclusion only confirms what the folklore teaches—that strangers to the illegal business rarely penetrate the curtain of secrecy. We therefore hold that section 5601(b)(2) satisfies the test of *Tot v. United States, supra*.

That case is by no means decisive of the situation here though it may have been the inspiration for the plan of this bill.

Suppose someone made the statement to you that the State of Montana is depriving Negroes of their right to vote on account of their race or color. Suppose you asked: What proof have you of that statement? He answered: The Director of the Census has just determined that less than 50 percent of the persons of voting age residing in Montana were registered on November 1, 1964; less than 50 percent of the persons of voting age residing in Montana voted in the presidential election of November 1964. Would you consider that answer to be the slightest proof of the statement? I doubt it. I daresay you would ask many, many questions; one of them would be

how many of those who constitute 50 percent of the persons of voting age residing in Montana were citizens? How many sought to register? How many were qualified under Montana law?

I daresay that you would know that the premise is totally unrelated to the ultimate fact to be proven, and that any thought that there might be a valid connection between the two would only arise if someone planted the seed of propaganda in your thoughts. "Well, you know, voting discrimination has unquestionably been widespread" out there, but we haven't been able to prove.

You will see from this bill that whatever the area may be, voting tests become inoperable in that area the very instant the Director of the Census determines one of the two factors of section 3(a).

Absolutely no remedy is given in the bill to the State or any political subdivision thereof to offer proof to rebut the thoroughly irrational presumption. Even if it were rational, it would be invalid because of this lack of opportunity.

A presumption is valid only if opportunity is given to rebut it in the forum in which the prosecution uses the presumption.

Suppose, for example, the presumption held valid in the *Gaines* case had had a provision in it: Should the defendant be found guilty in a case in which this presumption is used, he may offer evidence to rebut it in a certain court in Washington. If that court in Washington should find the presumption invalid, the verdict and sentence shall be set aside.

Doesn't that sound preposterous? It does, but that is exactly what this bill provides.

For fear that you may not have read what the Attorney General had to say on this subject before the House committee, I quote it:

In view of the premise for section 3(a), Congress may give sufficient territorial scope to the section to provide a workable and objective system for the enforcement of the 15th amendment where it is being violated. Those jurisdictions placed within its scope which have not engaged in such violations * * * the States and counties affected by the formula in which it may be doubted that racial discrimination has been practiced * * * *need only demonstrate in court that they are guiltless in order to lift the ban of section 3(a) from their registration systems.* That is, section 3(a) in reality reaches on a long-term basis only those areas where racial discrimination in voting in fact exists. (House hearing manuscript, p. 32.)

That statement is that of the chief law officer of the Government of the United States so naturally it has been heeded and quoted.

To paraphrase the television: Will the real section 3 please stand up?

Here is what section 3(c) of the bill provides:

(c) Any State with respect to which determinations have been made under subsection (a) or any political subdivision with respect to which such determinations have been made as a separate unit, may file in a three-judge district court convened in the District of Columbia an action for a declaratory judgment against the United States, alleging that neither the pe-

petitioner nor any person acting under color of law has engaged during the ten years preceding the filing of the action in acts or practices denying or abridging the right to vote for reasons of race or color. If the court determines that neither the petitioner nor any person acting under color of law has engaged during such period in any act or practice denying or abridging the right to vote for reasons of race or color, the court shall so declare and the provisions of subsection (a) and the examiner procedure established by this Act shall, after judgment, be inapplicable to the petitioner. Any appeal from a judgment of a three-judge court convened under this subsection shall lie to the Supreme Court.

No declaratory judgment shall issue under this subsection with respect to any petitioner for a period of ten years after the entry of a final judgment of any court of the United States, whether entered prior to or after the enactment of this Act, determining that denials or abridgments of the right to vote by reason of race or color have occurred anywhere in the territory of such petitioner.

The Attorney General says that the States and counties affected by the formula "need only demonstrate in court that they are guiltless."

What court? The answer is, a three-judge district court convened in the District of Columbia.

Who will appoint that court? From whence will the judges be selected? Will they be judges from the District of Columbia, judges from the affected States, or judges from just anywhere in the United States?

What does the action brought in that court have to allege? It must allege that neither the petitioner nor any person acting under color of law has engaged during the 10 years preceding the filing of the action in acts or practices denying or abridging the right to vote for reasons of race or color.

The Attorney General says that the convicted State must only demonstrate that it is guiltless in order to "lift the ban."

The bill says that the State must allege that neither it nor any person acting under color of law has during the 10 years preceding the filing of the bill engaged in any act or practice contravening the 15th amendment.

What in the world does "any person acting under color of law" mean?

Even assuming that it means any person within the jurisdiction of the State, it is bad enough.

Of course, anyone who reads the bill knows that the so-called remedy is a will-o'-the-wisp because even in Georgia during the last 10 years in 1 county of the 159 there has been a decree of the Federal court to the effect that certain officials of that county did engage in acts and practices denying or abridging the right of certain people to vote by reasons of race or color (*United States v. Raines*, — F. Supp. —, supra).

So it is, therefore, that if the ban were placed on Georgia, Georgia could not lift that ban because in 1 of her 159 counties there has been a court decree.

The same applies to any other State affected by this bill. The Attorney General knows and you know that in some of the counties and/or parishes of Mississippi, Alabama, and Louisiana, there have been such decrees.

Under this bill, decrees in perhaps 10 or 12 counties (the Attorney General can supply the exact figure) out of the 300 or 400 affected effectually prevents any lifting of the ban.

Time does not permit the present document to go into details of the act beyond section 3 thereof.

As a matter of fact, most of the other sections fail when section 3 shall have been deemed or declared invalid.

However, there is one glaring section to which attention should be called. That is section 8. It reads as follows:

SEC. 8. Whenever a State or political subdivision for which determinations are in effect under section 3(a) shall enact any law or ordinance imposing qualifications or procedures for voting different than those in force and effect on November 1, 1964, such law or ordinance shall not be enforced unless and until it shall have been finally adjudicated by an action for declaratory judgment brought against the United States in the District Court for the District of Columbia that such qualifications or procedures will not have the effect of denying or abridging rights guaranteed by the fifteenth amendment. All actions hereunder shall be heard by a three-judge court and there shall be a right of direct appeal to the Supreme Court.

The purported object of this bill is to prevent the application of voting qualifications or procedure so as to deny or abridge the right to vote on account of race or color. The contention is that voting qualifications and procedures are being imposed or applied so as to deny 15th amendment rights.

Yet, the bill provides that if it is determined under section 3 (a) and (b) that a State or political subdivision is using tests or devices for discriminatory purposes, that no State may enact any law or ordinance even repealing the offending test or device, or rather, that if it does enact such law or ordinance, it shall not be enforced by the State unless and until it shall have been finally adjudicated by an action for declaratory judgment brought in the District Court for the District of Columbia that such qualifications or procedures will not have the effect of denying or abridging rights guaranteed by the 15th amendment.

Now here is how section 8 would work in some of the States which possibly may be affected by the bill.

Suppose it is declared by the Attorney General that those registration laws which contain voting qualifications fall under the ban of section 3(a). The State says to the Federal Government: All right, you are accusing us of using our registration laws so as to deprive Negroes of their right to vote; a great many of the States of the Union don't have any registration laws, so we will go along with those States and repeal our registration laws. And that is what the States do. But here comes section 8. That repeal of the registration laws cannot become effective until a three-judge court in the District of Columbia, selected by someone, adjudicates that the repeal of the

offending statute will not have the effect of denying or abridging rights guaranteed by the 15th amendment.

I imagine that for the first time in the history of constitutional government anywhere, it is being suggested that the Congress has the right indirectly to enjoin a State legislature from repealing one of its laws.

In the last 2 or 3 days, I have read the following:

But why suppose the irreconcilability of the two propositions?

Proposition 1: The States have the right to prescribe voter qualifications.

Proposition 2: No State may discriminate against a racial minority.

What, then, if a State, in the cause of practising its rights under the first proposition, denies the rights of Negroes under the second? The Federal Government should precisely step in and legislation to this effect should be passed—but its mandate should then be, not to revoke voter qualification tests as set up by the States, but to administer them without reference to race or creed.

I suggest that the author of that column, and every Member of Congress, read title I of the Civil Rights Act of 1964, entitled, "Voting Rights" (42 U.S.C. 1971, as amended by sec. 131 of the 1957 act and 1960 act and 1964 act).

That statute, approved July 2, 1964, provides that "no person acting under color of law shall * * * employ any literacy test as a qualification for voting in any Federal election unless (1) such test is administered to each individual and is conducted wholly in writing, and (2) a certified copy of the test and of the answers given by the individual is furnished to him within 25 days of the submission of his request made within the period of time during which records and papers are required to be retained and preserved pursuant to title 3 of the Civil Rights Act of 1960."

That act has been in force for almost 9 months.

Has any person anywhere been accused in any criminal proceeding or in any civil proceeding of violating that act? Does the Department of Justice know of any violation of the act?

Why does not that act give to the Department of Justice every power that it needs to insure that voting tests or devices will not be used at any time or place so as to deprive Negroes of their 15th amendment rights? Has any effort been made to use it?

I have been taught, "If thy right hand offend thee cut it off, and cast it from thee" (St. Matthew 5: 30).

If any statutes which give rise to the accusation that their use offends the 15th amendment are offensive to the Department of Justice, it ought at least give the privilege of cutting them out and casting them aside.

HEARINGS BEFORE THE SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS OF THE COMMITTEE ON THE JUDICIARY, U.S. SENATE, 89TH CONGRESS, 1ST SESSION, ON S. 1564

STATEMENT OF THOMAS H. WATKINS, ATTORNEY AT LAW

It is a privilege and an honor to be permitted to appear before this committee. I am here at the request of Governor Johnson, Senator Eastland and Senator Stennis of Mississippi, and my purpose is to defend the Constitution of the United States.

In destroying the constitutional rights of Mississippi and other States to use literacy tests as a qualification of the privilege of voting, S. 1564 constitutes an undisguised frontal assault on the Constitution, as interpreted by the Supreme Court of the United States for more than 100 years. This bill flies squarely in the face of the same Constitution that every U.S. Senator has taken an oath to uphold.

The very first article of that Constitution authorizes the individual States to decide the qualifications of voters in both Federal and State elections, subject only to the proviso that whoever is deemed qualified to vote for "the most numerous branch of the State legislature" is automatically qualified to vote in Federal elections.

Making this a State function was no casual decision. At the time of the adoption of the Constitution, there was wide divergence of opinion among the States as to what should be the voting qualifications of their respective citizens. New Hampshire permitted only male inhabitants 21 years of age, who were not paupers, to vote. Massachusetts limited the privilege of voting to male inhabitants 21 years of age who had an estate of the value of 60 pounds. Connecticut permitted only those to vote who had "maturity in years, quiet and peaceful behavior, a civil conversation, and 40 shillings freehold or 40 pounds personal estate." New York limited the privilege of voting to male inhabitants of full age, possession a freehold of the value of 20 pounds within the county and had actually paid taxes to the State. Pennsylvania permitted only freemen who paid taxes to vote. Maryland limited the privilege of voting to freemen who were property owners. North Carolina allowed only those to vote who were freemen 21 years of age who owned 50 acres of land to vote. South Carolina limited voting to free white men who owned 50 acres of land (*Minor v. Happersett*, 21 Wall 162, 21 L. Ed. 827).

Recognizing that each should reserve the right to say which of its citizens could exercise the privilege of voting, the Constitution left the fixing of voting qualifications to the States and provided in section 2 of article I that in choosing Representatives for Congress "The Electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature."

This provision met with the complete approval of the delegates. According to James Madison's "Journal of the Constitutional Convention," the only dissension arose when Gouverneur Morris proposed

that all electors be required to be freeholders. This suggestion was rejected on the theory that the States were the best judges of the circumstances and temper of their own people.

During the Constitutional Convention the question of Federal control over qualifications of electors arose. Both George Mason and James Madison expressed the view that this would be a dangerous power in the hands of the National Legislature.

The section was unanimously approved by the Convention on August 8, 1787. During the campaign for ratification of the Constitution, this section was strongly supported in "The Federalist Papers."

Article II, section 1, paragraph 2, concerning the mode of choosing electors for President and Vice President, is clear and concise:

Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress * * *

There can be no doubt that the framers of the Constitution intended that the entire process of choosing electors was to remain in the hands of the States. This was clearly followed by adoption of the 9th and 10th amendments reserving unto the States and unto the people all powers and rights not delegated to the United States by the Constitution.

A literacy test as a qualification for voting was adopted by Connecticut in 1855 and by Massachusetts in 1857.

But proponents of this bill will say that all of this was prior to the adoption of the 15th amendment under which they claim the power to establish voter qualifications in some of the States. Does the 15th amendment give Congress any such power? Clearly, it does not.

The fact that the 15th amendment was not intended to take from the States the exclusive right to fix voting qualifications is shown by the fact that the 17th amendment, adopted many years later, contains the identical language originally used in section 2 of article I of the Constitution:

The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

The 15th amendment does prohibit any State from using race or color as a prerequisite for qualifying to vote. Congress has the authority to enforce this amendment by appropriate legislation. Congress can make it a criminal offense to deny the right to vote because of race or color, and Congress can fix the penalties for its violation. It has done so. Congress can provide for injunctive relief against State violating this constitutional provision. It has done so. Congress can authorize suits to be filed by the United States to enforce the 15th amendment, and Congress may give jurisdiction of such actions to three-judge courts. It has done so.

The 15th amendment did not give Congress the power to prohibit discrimination on grounds of education. This bill, in seeking to abolish literacy tests, does just that. After the 15th amendment had been passed by the House, the Senate amended it to add prohibitions against discrimination on grounds of education. This amendment was defeated in the House, and the 15th amendment ultimately passed in its present form, prohibiting only discrimination because of race or

color. In other words, those who framed the 15th amendment specifically refused to give Congress the power to do that which S. 1564 seeks—the elimination of literacy or educational requirements as qualifications for voters.

It is clear that Congress and the States intended the 15th amendment to mean exactly what it said. The color of a man cannot be a reason to grant or deny him the right to vote. But all other qualifications are left entirely to the wisdom of the States.

Mr. Justice Story, in discussing the 15th amendment, stated the correct rule concisely at page 719 of volume 2 of "Story on the Constitution" (1891), as follows:

There was no thought at this time of correcting at once and by a single act all the inequalities and all the injustice that might exist in the suffrage laws of the several States. There was no thought or purpose of regulating by amendment, or of conferring upon Congress the authority to regulate, or to prescribe qualifications for, the privilege of the ballot.

The 15th amendment does not give the vote to anyone. It does not alter in any way the provisions of article I of the Constitution, which clearly reserved to the States the power to fix the qualifications of voters. In 1876, the Supreme Court stated in *Reese v. United States* (92 U.S. 214):

The 15th amendment does not confer the right of suffrage upon anyone. It prevents the States, or the United States, however, from giving preference, in this particular, to one citizen of the United States over another on account of race, color, or previous condition of servitude * * *

The power of Congress to legislate at all upon the subject of voting at State elections rests upon this amendment, and can be exercised by providing a punishment only when the wrongful refusal to receive the vote of a qualified elector at such elections is because of his race, color, or previous condition of servitude.

Other cases decided by the Supreme Court through the years have upheld this principle. In *Pope v. Williams* (193 U.S. 621 (1904)), the Court reaffirmed its earlier holding that the States retained control over suffrage, even after the adoption of the 15th amendment. In that case, the Court said:

Since the 15th amendment the whole control over suffrage and the power to regulate its exercise is still left with and retained by the several States, with the single restriction that they must not deny or abridge it on account of race, color, or previous condition of servitude.

* * * * *

The question whether the conditions prescribed by the State might be regarded by others as reasonable or unreasonable is not a Federal one.

In *Guinn v. United States* (238 U.S. 347 (1915)), one of the questions involved was whether the use by a State of a literacy test conflicted with the 15th amendment. In that case the Supreme Court held

that the establishment of a literacy test was a valid exercise by a State of a lawful power vested in it and was not subject to supervision.

This holding was reaffirmed by the Supreme Court in 1959 in *Lassiter v. North Hampton County Board of Elections* (360 U.S. 45), which involved a literacy test required by the State of North Carolina. In holding that a State may apply a literacy test to all voters, irrespective of race or color, the Supreme Court recognized that the State has the sole power to determine the qualifications of voters, and said:

The States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised (*Pope v. Williams*, 193 U.S. 621, 633; *Mason v. Missouri*, 179 U.S. 328, 335), absent of course the discrimination which the Constitution condemns.

* * * *

Literacy and illiteracy are neutral on race, creed, color, and sex, as reports around the world show. Literacy and intelligence are obviously not synonymous. Illiterate people may be intelligent voters. Yet in our society where newspapers, periodicals, books and other printed matter canvass and debate campaign issues, a State might conclude that only those who are literate should exercise the franchise. (Cf. *Franklin v. Harper*, 205 Ga. 779, 55 S.E. 2d, 221, appeal dismissed 339 U.S. 946.) It was said last century in Massachusetts that a literacy test was designed to insure an "independent and intelligent" exercise of the right of suffrage. (*Stone v. Smith*, 159 Mass. 413-414, 34 N.E. 521.) North Carolina agrees. We do not sit in judgment on the wisdom of that policy. We cannot say, however, that it is not an allowable one measured by constitutional standards.

In *Williams v. Mississippi* (170 U.S. 213, 42 L. Ed. 1012 (1898)), the Supreme Court of the United States upheld the literacy test required by the Mississippi constitution. In *Trudeau v. Barnes* (65 F. 2d 563 (1933)), the U.S. Court of Appeals for the Fifth Circuit upheld the constitutionality of the Louisiana literacy requirement.

I respectfully submit that there is no authority to the contrary. If it is the desire of the people of this country to take from the States the right to require a certain degree of literacy in order to qualify to vote, this must be accomplished by an appropriate amendment to the Constitution. The power of Congress in this respect is exactly the same as it is with respect to prohibiting the requirement by the States of a payment of a poll tax to vote in Federal elections. It was correctly recognized that this could be done only by amending the Constitution. Accordingly, the 24th amendment to the Constitution was passed and adopted.

On April 10, 1962, Hon. Robert F. Kennedy, Attorney General of the United States, accompanied by Hon. Burke Marshall, Assistant Attorney General, testified before this committee with respect to S. 480, S. 2750, and S. 2979. The Attorney General supported only S. 2750 which did not take from the States the right to fix qualifications of voters. During that testimony, the Attorney General stated:

This legislation does not set the qualifications of these voters. It merely sets the test, the testing of those qualifications. And, in my judgment, that is clearly constitutional.

If we were setting the qualifications for the individuals then, I believe that it would be unconstitutional and would require a constitutional amendment (p. 269).

I would say that if we came in here and offered legislation that set the qualifications of the voters that it would be unconstitutional; not unconstitutional only under article I, section 4, but under the 14th and 15th amendments. I would agree with you entirely then, but we are not doing that (p. 271).

For instance, I think that the Civil Rights Commission suggested and recommended that we do away with all literacy tests, at least four out of the six members did, and *I would be opposed to that (p. 293).*

I would have grave doubts about the constitutionality of that particular piece of legislation which abolishes all literacy tests, as I understand it (p. 296).

I think that a State, if it determines that it wants to use or utilize a literacy test, should certainly be permitted to do so (p. 297).

It is, therefore, apparent that Attorney General Robert F. Kennedy, with the excellent advice of Hon. Burke Marshall, was of the opinion that legislation which deprived the States of the right to use literacy tests as a requirement for voting would be unconstitutional and that only a constitutional amendment could make that change in our basic law.

I am astonished to find Attorney General Nicholas Katzenbach testifying directly to the contrary on March 18, 1965, before Subcommittee No. 5 of the Committee on the Judiciary of the House of Representatives. The Attorney General was also accompanied by Hon. Burke Marshall as adviser.

In an effort to sustain the constitutionality of the bill now before this committee, the Attorney General takes the position that Congress has the same power to legislate under the 15th amendment as it does under the commerce clause, section 8 of article I, which provides:

The Congress shall have power * * * to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

The Attorney General makes no distinction between the unlimited affirmative right of Congress to legislate in the field of commerce and its very limited right to prohibit the States and the Federal Government from discriminating in the field of voting because of race or color under the 15th amendment. The Attorney General relies on *Gibbons v. Ogden* (9 Wheat. 1), and its description of the power of Congress to regulate interstate commerce.

The 15th amendment, like the 14th amendment, merely prohibits a State from discriminating. In *Owney v. Morgan* (65 L. Ed. 837, 256 U.S. 94), the Court said:

Its function is negative, not affirmative, and it carries no mandate for particular measures of reform.

The Attorney General states that the bill will deny the use of "onerous, vague, unfair tests and devices enacted for the purpose of disenfranchising Negroes." The bill, however, does not use this language. It prohibits the use of any literacy tests. If the bill prohibited onerous, vague, and unfair tests which tended to disenfranchise Negroes, it would be very much closer to the power granted Congress by the 15th amendment.

The Attorney General states:

It is only after long experience with lesser means and a discouraging record of obstruction and delay that we resort to more far reaching solutions.

Noting that the description of this bill as "far reaching" is an understatement, I respectfully remind the committee that the bill was offered only 8 months after passage of title I of the Civil Rights Act of 1964 which granted broad new powers for the enforcement of the 15th amendment. This is much too short a time within which to determine whether this recently passed legislation is adequate.

The *Lassiter* case was again cited with approval by the Supreme Court of the United States on March 1, 1965, in *Carrington v. Rash* (13 L. Ed. 2d 675).

The classification of States (and/or political subdivisions thereof) to which the act is applicable is not a rational classification, but is discriminatory, unrealistic, arbitrary, and unreasonable

This act does not apply to all States or political subdivisions but is applicable only to a special class of States or political subdivisions. This classification violates the fifth amendment to the Constitution. The prohibition against denial of due process of law is, under this amendment, applicable to the United States (*Bolling v. Sharpe*, 98 L. Ed. 884. Cf. separate opinion, *Portland Cement Co. v. Minnesota*, 3 L. Ed. 2d, 427).

Moreover, article IV, section 2, of the Constitution of the United States provides:

The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

It is thoroughly established that any classification must rest always upon some difference, and *this difference must bear a reasonable and just relation to the purpose of the act in respect to which classification is proposed.*

The members of the class are determined by the Attorney General, based on findings of the Director of the Census, either: (1) That less than 50 percent of the persons of voting age residing therein were registered on November 1, 1964; or (2) that less than 50 percent of such persons voted in the presidential election of November 1964.

This classification is unrealistic, arbitrary, and unreasonable, as well as discriminatory. It does not pretend to prevent discriminatory use of tests except in approximately six States. Other States can have and use the tests as much as they please and yet not be within the class. One State having only 49 percent of the persons of voting age residing therein registered on November 1, 1964, would come within the act while another State with only 50.1 percent of the persons of

voting age residing therein registered would not come within the act regardless of the discrimination in that State.

The evil sought to be avoided is the *discriminatory* use of tests, and whether or not 50 percent of the residents were registered is not by any theory determinative of the discriminatory use of tests. It might be due to apathy or a failure on the part of residents to attempt to register. Registration is not required and cannot be required.

In other words, the basis for the classification is a conclusive legislative presumption that where 50 percent of the residents of a State or political subdivision did not vote in the presidential election of 1964 that there had been a discriminatory use of tests for voter qualification, while this was not true if only 51 percent of the residents voted in said election.

This presumption is conclusive in that no section of the act authorizes a contest thereof. The only right of any State to contest is the right to attempt to be removed from the class, as provided by section 3(b), page 2, under the impossible condition that the State or political subdivision has the burden of proving that *no person* acting under color of law has engaged during such period (the 10 years preceding) in *any act* or practice denying or abridging the right to vote for reasons of race or color. No State or political subdivision anywhere could so prove.

Moreover, the class is a closed class. It permanently excludes all other States or political subdivisions from ever coming within the act, regardless of later discrimination, the determinative period being November 1, 1964. States not within the act on that date may proceed to use tests and devices for voter qualification at will and discriminate in the application thereof at will without coming within the class. The fact that less than 50 percent of the voters were registered in 1963 or in 1965 is immaterial. Nor can any State or political subdivision in the class as of that date be removed from the class even if thereafter more than 50 percent of the residents register or vote in presidential elections.

The Supreme Court of the United States has very recently condemned this type of classification in *McLaughlin v. Florida* (13 L. Ed. 2d, 222). The Court quoted with approval:

Classification "must always rest upon some difference which bears a reasonable and just relation to the act in respect to which classification is proposed, and can never be made arbitrarily and without any such basis." "Arbitrary selection can never be justified by calling it classification."

In the case of *Heiner v. Donnan* (76 L. Ed. 772; 285 U.S. 312), the Court held that a classification could not be based upon conclusive presumption.

The above case was recently cited with approval in *Carrington v. Rash* (13 L. Ed. 675 (Mar. 1, 1965)).

Numerous provisions of the act deny States (and/or political subdivisions thereof) and the citizens thereof due process of law contrary to the requirements of the fifth amendment to the Constitution, and the act is prohibited by article I, section IX (9), prohibiting the Congress from passing a bill of attainder or an ex post facto law.

Section 3(a), page 2, creates a conclusive or irrebuttable presumption that if 50 percent of the residents were not registered by November 1,

1964, or if 50 percent did not actually vote in the presidential election of November 1964, that the State is guilty of such massive discrimination in the application of tests for voter qualifications that the State is separately classified and denied all its political rights, *with no opportunity given to it to rebut this presumption.*

Section 3(c), page 2, provides that no State can be removed from the classification and regain its political rights lost under 3(a) until after a final judgment of a three-judge court of the District of Columbia and the Supreme Court that "** * * neither the petitioner nor any person acting under color of law has engaged during such period in any act or practice denying or abridging the right to vote for reasons of race or color * * **" *This is known by Congress to be an impossible requirement.* Furthermore, no action whatsoever can even be brought for 10 years after any final judgment of any court of the United States, *whether entered prior to or after the enactment of this act*, determining that there has been any denial of right to vote by reason of race or color *anywhere in the territory* of such petitioner. The act denies a state its political and constitutional rights for past offenses and does not punish only for denials or abridgement of the right to vote after the enactment of the act; i.e., is a bill of attainder.

Section 4(a), page 3, provides for the commencement of the examiner procedure at the will of the Attorney General under either of two separate circumstances: (1) That he has received complaints in writing from 20 or more residents of a political subdivision coming under section 3(a) alleging that they had been denied the right to vote by reason of race or color. There is no requirement that these be affidavits or sworn statements. The Attorney General is given absolute discretion as to whether he believes such complaints to be meritorious. No right is given the State to challenge these statements or to be heard thereon, and the affected State is, therefore, denied any right to a hearing as to whether or not the examiner procedure should go into effect in that area or unit; or (2) the Attorney General is granted the arbitrary right to institute examiner procedure if in his judgment it is necessary to enforce the guarantees of the 15th amendment. No right to a hearing is granted the State.

By section 5(a), page 4, rights of the State with reference to registration of electors are taken from the State. The Federal examiners are given the full right to examine applicants concerning their qualifications for voting. Arbitrary power is given the Commission. The section provides that the application shall be in "such form as the Commission may require." The only requirement is that it contain an allegation that the applicant is not registered to vote. The requirement that within 90 days preceding his application he has been denied the opportunity to register is placed in the section but then it is provided that this provision "may be waived by the Attorney General." The Attorney General thus may, at his whim or fancy, write out any requirement of exhaustion of remedies by the applicant. There is no positive requirement that the applicants meet the Mississippi age, residence, sanity, or absence of criminal conviction qualifications to vote. The only requirement is: "Any person whom the examiner finds to have the qualifications prescribed by state law *in accordance with instructions received under 6(b)* shall promptly be placed on a list of eligible voters." Section 6(b), page 7, is merely that the Civil Service Commission "shall, after consultation with the Attorney General, instruct the examiner concerning the qualifi-

cations required for listing." Thus, the Commission could ignore entirely the requirements of State law or determine under the advice of the Attorney General which one should be honored and which one ignored.

Section 6(a), page 6, purports to give election officials an opportunity to challenge the list of eligible voters prepared by the examiner. The list is required to be transmitted to the appropriate election officials at the *end of each month*, and yet a challenge must be made within 10 days after the challenged person is *listed*. Presumably it was intended to be 10 days after the list was *transmitted*, but the act does not so provide. No opportunity of any representative of any election official to be present at the hearing of the applicant is granted. No requirement is made that the records of the examination of the applicant be preserved or be in writing or be available to election officials. All that the election officials would have would be a bare list of eligible voters, and an investigation thereof within 10 days would be impossible. The election officials would have no knowledge of any facts which would make the applicant a qualified elector or which would keep him from being a qualified elector. The challenge must be accompanied by the affidavit of at least two persons having personal knowledge of the facts constituting grounds for the challenge. The burden of proof of lack of qualifications for registration is on the election officials. The finding of the hearing officer on such a challenge cannot be overturned "unless clearly erroneous." The practical effect of section 6(a) is to deny the State or political subdivision any right whatsoever to challenge the list.

Section 8, page 8, arbitrarily takes from the State all legislative functions with regard to voter qualifications. It provides that no future law or ordinance can be enacted imposing qualifications for voting, or rather that it cannot be enforced, if passed, until the State of Mississippi has brought an action for declaratory judgment against the United States in the District Court for the District of Columbia and secured an adjudication, *with the accompanying burden of proof*, that "such qualifications or procedures will not have the effect of denying or abridging rights guaranteed by the 15th amendment." This prohibition is against any new enactment regardless of its validity or its constitutionality.

The mere possibility of future improper administration of a statute is no ground for forbidding the legislation valid on its face and valid if properly administered.

By section 9(a), page 8, severe criminal penalties are imposed. Subparagraph (e) goes so far as to permit the holding up of the election of any official until final hearing, and, therefore, for an indefinite time, whenever a single person "alleges to an examiner" that he has not been permitted to vote or that his vote was not counted. No statement under oath by such person is required. The U.S. attorney immediately applies to the district court for an order enjoining the certification of the results of the election, and "the court shall issue such an order pending a hearing to determine whether the allegations are well founded." There is thus granted the right for a preliminary injunction without a hearing and an unlimited holding up of an election until court procedure is concluded.

Section 11(b) provides that the only court having jurisdiction over the subject matter of the act is the District Court of the District of

Columbia, a thousand miles from some of the States which are included in the class.

There is no doubt but that the provisions of this act violate the constitutional guarantees of the right to justice and remedies for injuries. The U.S. Constitution, through the due process clause of the fifth amendment, guarantees open courts, and a remedy for injuries and prompt justice is guaranteed. While judicial remedies can be suspended, they can only be suspended in an emergency and for a reasonable time. Such guarantees are derived from the Magna Carta and are self-executing and mandatory. The Magna Carta conferred on the people of England one of the most highly prized rights of man; that is, the right guaranteed by the brief but expressive clause: "We will sell to no man, we will not deny to any man, either justice or right." Due process of law not only requires open courts and prompt justice, but requires a hearing which is a hearing in fact and not merely in name.

Here the State of Mississippi has been condemned by legislative classification without an opportunity to be heard before its rights and privileges as a State are withdrawn. If it is to question the classification, it must do so as a plaintiff with the burden of proof imposed on a plaintiff and must sustain an impossible burden of proof and must wait for 10 years to do so. If it is to enact any new law, it must sustain the burden of proof of innocence, not merely deny guilt.

In *Garfield v. United States* (53 L. Ed. 168; 211 U.S. 219), the Supreme Court of the United States said:

The right to be heard *before* property is taken or *rights or privileges withdrawn* which have been previously legally awarded is of the essence of due process of law. It is unnecessary to recite the decisions in which this principle has been repeatedly recognized. It is enough to say that its binding obligation has never been questioned in this court.

To the same effect is *Bailey v. Alabama* (55 L. Ed. 191; 219 U.S. 219).

The opportunity to be heard is an essential requisite of due process of law (*Postal Telegraph v. Newport*, 247 U.S. 464; 62 L. Ed. 1215).

Moreover, it must be a real opportunity to be heard as was stated in *Brinkerhoff-Faris Trust & Sav. Co. v. Hill* (74 L. Ed. 1107; 281 U.S. 673).

This bill is in reality a bill of attainder directed at the entire citizenry of the State of Mississippi as a class and depriving them of political rights or suspending their political rights to control State elections.

In *Cummings v. Missouri* (18 L. Ed. 356; 71 U.S. 277), the Court defined a bill of attainder as follows:

A bill of attainder is a legislative act, which inflicts punishment without a judicial trial * * *. These bills * * * may be directed against (individuals or) a whole class * * *.

"Bills of this sort," says Mr. Justice Story, "have been most usually passed * * * in times of violent political excitements * * *." *Punishment * * * embraces deprivation of suspension of political or civil rights * * *. Any deprivation or suspension of * * * rights for past conduct is punishment * * *. These bills may inflict punishment absolutely*

* * * conditionally. * * * *To make the enjoyment of a right dependent upon an impossible condition is equivalent to an absolute denial of the right under any condition, and such denial, enforced for a past act, is * * * punishment imposed for that act.*

In [cases of bill of attainder] the legislative body in addition to its legitimate function, exercises the powers and office of judge * * *. It pronounces upon the guilt of the party, without any of the forms of safeguards of trial; it determines the sufficiency of the proof produced * * *. It fixes the degree of punishment in accordance with its own notions of the enormity of the offense.

[Whether] the clauses * * * declare * * * give (or) * * * assume it * * * the legal result [is] the same, for what cannot be done directly cannot be done indirectly. The constitution deals with substance, not shadows * * *. It [the constitutional prohibition] intended that the rights of the citizens should be secure against deprivation for past conduct by legislative enactment, under any form, however disguised.

In *Ex parte Garland* (71 U.S. 333; 18 L. Ed. 366), the Court struck down an act of Congress as a bill of attainder prohibited by the Federal Constitution.

Here the citizens of Mississippi are denied their constitutional right to prescribe the qualifications of electors, if they are determined, without a hearing, to come under section 3(a) of the act, because of facts existing prior to the date of the act. This denial lasts for "10 years after the entry of a final judgment of any court of the United States, *whether entered prior to or after the enactment of this act.*" This is unquestionably a deprivation of political rights for a full 10-year period because of past activities.

That this placing of the burden of proof of lack of guilt on the State of Mississippi is denial of due process is clearly brought out in *Speiser v. Randall* (2 L. Ed. 2d, 1460; 357 U.S. 513).

In *Bailey v. Alabama* (219 U.S. 219, 239; 55 L. Ed. 191, 200; 31 S. Ct. 145), the Court said:

It is apparent that a constitutional prohibition cannot be transgressed indirectly by the creation of a statutory presumption any more than it can be violated by direct enactment. The power to create presumptions is not a means of escape from constitutional restrictions.

S. 1564, in denying to a few States rights enjoyed by the other States of the Union, is invalid

The proposed legislation would deprive Mississippi and a few of her sister States of the right to fix qualifications of voters. It takes from those few States the right to legislate in this field. The remaining States of the Union are left free to exercise their full constitutional rights in this field. Thus, the act attempts to place Mississippi and a few other States in a straitjacket so far as their election laws are concerned. In so doing the act is invalid. There is no such thing as a second-class State. Every State in this Union is equal to every other State and is guaranteed the rights and privileges enjoyed by every other State. In *Coyle v. Smith* (221 U.S. 559; 55 L. Ed. 853), the Supreme Court said:

The power is to admit "new States into this Union."

"This Union" was and is a union of States, equal in power, dignity, and authority, each competent to exert that residuum of sovereignty not delegated to the United States by the Constitution itself.

* * * there is to be found no sanction for the contention that any State may be deprived of any of the power constitutionally possessed by other States, as States, by reason of the terms in which the acts admitting them to the Union have been framed.

To this we may add that the constitutional equality of the States is essential to the harmonious operation of the scheme upon which the Republic was organized. When that equality disappears we may remain a free people, but the Union will not be the Union of the Constitution.

In *Butler v. Thompson* (U.S.D.C. Va., 97 F. Supp. 17, affirmed 241 U.S. 937; 95 L. Ed. 1365), it was held that an act of Congress of 1870 prohibiting the State of Virginia from changing its constitution so as to deprive any class of citizens the right to vote would be invalid if construed to prevent that State from enlarging to 3 years its poll tax requirements as a condition precedent to the right to vote. The Court said:

The act of 1870, too, must be studied against the background of the tragic era of which it was a part.

Nor was this act a compact under which Virginia, after the Civil War, was readmitted to the Union. The Supreme Court has ruled that the Confederate States were never out of the Union and, hence, there was no necessity for readmission (*State of Texas v. White*, 7 Wall. 700; 74 U.S. 700; 19 L. Ed. 227).

This act does not attempt to place Virginia in a strait-jacket so far as the election laws of Virginia are concerned. *If the act made that attempt, the act would be invalid.* All States, after their admission into the Federal Union, stand upon equal footing and the constitutional duty of guaranteeing each State a republican form of government gives Congress no power in admitting a State to impose restriction which would operate to deprive that State of equality with other States.

S. 1564 violates the constitutional requirement that trial of all crimes shall be by jury, and such trials shall be held in the State where said crimes shall have been committed

S. 1564 completely ignores the fact that clause 3 of section 2 of article III provides:

The Trial of all Crimes, except in Cases of Impeachment, shall be by jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

The bill also ignores the sixth amendment to the Constitution which provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the *State and district wherein the crime shall have been committed*, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defense.

Section 9 of the bill provides criminal penalties which include a \$5,000 fine or imprisonment for not more than 5 years, or both, for violations of the act.

Section 8 of the act provides for the filing of actions thereunder in the U.S. District Court for the District of Columbia, and further provides:

All actions hereunder shall be heard by a three-judge court, and there shall be a right of direct appeal to the Supreme Court.

Section 11(b) provides that no court other than the District Court for the District of Columbia shall have jurisdiction to issue any declaratory judgment or injunctions against the enforcement of the bill. The act clearly violates the above-quoted sections of the Constitution as well as the seventh amendment, which provides:

In suits at common law, where the value in controversy shall exceed twenty dollars, *the right of trial by jury shall be preserved*, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

The composition of and procedure before three-judge courts is established by section 2284 of title 28, United States Code. This Federal statute does not authorize or permit the right of trial by jury before a three-judge court. Therefore, the provisions of this act, and specifically section 8 thereof, requiring "all actions hereunder" to be heard by a three-judge court automatically deprives a person charged with a criminal offense under this act of a trial by jury as guaranteed by the Constitution of the United States. The act is clearly unconstitutional in this respect.

The reason for the bill is perfectly obvious and known to all. Civil rights organizations began well-organized demonstrations in Selma, Ala. They were continued day after day and week after week until the inevitable act of violence occurred. Television cameras were present to publicize this event before the entire Nation. The leader of the demonstrations immediately went to Washington and was afforded an interview by the President and the Vice President of the United States. Under highly emotional circumstances, the President presented this bill to a joint session of Congress, calling for its immediate passage. Enveloped by this mass hysteria, the Senate of the United States orders this committee to report a bill fraught with constitutional defects back to the Senate by April 9, 1965. I respectfully submit that this is not the atmosphere or the manner in which serious constitutional questions should be resolved. Instant

legislative action, in an effort to cure what is believed to be an existing wrong, can only do irreparable damage to the constitutional rights of the people of this great country.

Senator John F. Kennedy, in "Profiles in Courage," described Senator George Norris' opposition to the armed ship bill by saying:

He was fearful of the bill's broad grant of authority, and he was resentful of the manner in which it was being steam-rolled through the Congress. It is not now important whether Norris was right or wrong. What is now important is the courage he displayed in support of his convictions.

The same author also quotes Senator Norris as follows:

I have no desire to hold public office if I am expected blindly to follow in my official actions the dictation of a newspaper combination * * * or be a rubberstamp even for the President of the United States.

I hope and pray that the wisdom of that outstanding liberal Senator is embodied in the breasts of a sufficient number of the present Members of this august body to grant right and reason an opportunity to be heard.

The present emotionalism does not justify taking constitutional shortcuts. A desirable goal does not justify an unconstitutional means. If the accomplishments of this bill are desirable, let them be forthcoming in the only legal way—by constitutional amendment. The first President of our country, mindful of the disposition of men to shake off the restraining bonds of the Constitution when the situation seemed to demand it or make it politically expedient, said in his Farewell Address:

If, in the opinion of the people, the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this in one instance may be the instrument for good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance, in permanent evil, any particular or transient benefit which the use can at any time yield.

I appreciate very much the courtesies extended to me by the chairman and members of this committee.



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VOTING RIGHTS LEGISLATION

APRIL 21, 1965.—Ordered to be printed

Filed under authority of the order of the Senate of April 21, 1965

JOINT STATEMENT OF INDIVIDUAL VIEWS BY MR. DODD, MR. HART, MR. LONG OF MISSOURI, MR. KENNEDY OF MASSACHUSETTS, MR. BAYH, MR. BURDICK, MR. TYDINGS, MR. DIRKSEN, MR. HRUSKA, MR. FONG, MR. SCOTT, AND MR. JAVITS OF THE COMMITTEE OF THE JUDICIARY SUPPORTING THE ADOPTION OF S. 1564, THE VOTING RIGHTS ACT OF 1965

[To accompany S. 1564, to enforce the 15th amendment of the Constitution of the United States]

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JOINT VIEWS OF 12 MEMBERS OF THE JUDICIARY COMMITTEE RELATING TO THE VOTING RIGHTS ACT OF 1965

The undersigned 12 members of the committee jointly submit the following individual views.

INTRODUCTION

The bill as introduced and reported is primarily intended to enforce the 15th amendment to the Constitution of the United States. Two principal means have been selected to accomplish this purpose. First, the bill would suspend the use of literacy and other tests and certain devices in areas where there is reason to believe that such tests and devices have been and are being used to discriminate on account of race and color. Second, the bill authorizes the appointment of Federal examiners to register persons in such areas. Criminal and civil remedies are provided for enforcement.

Because of differences of view concerning certain provisions of the bill, for example, section 9 which prohibits denial of the right to vote in any election for failure to pay a poll tax and section 4(a) (2) which provides a judicial avenue for States and subdivisions to seek the lifting of certain prohibitions otherwise imposed by the bill, these joint views do not cover such provisions. However, in the hope and expectation that a joint statement of those matters as to which we are agreed will be helpful, we submit this statement to express our recognition of the need for new, strong legislation to protect voting rights.

We all recognize the necessity to eradicate once and for all the chronic system of racial discrimination which has for so long excluded so many citizens from the electorate because of the color of their skins, contrary to the explicit command of the 15th amendment. We are also submitting an analysis of the various provisions of the bill as reported.

Three times within the past 8 years the Congress has attempted to secure the constitutional right to vote free from racial discrimination. Those attempts have not been full successful.

COMMITTEE ACTION

The President presented his proposals for a voting rights bill to a joint session of Congress on the evening of March 15, 1965, by a personal address and a written message. On March 16, the Senate received the President's message on voting rights and on March 17, the President submitted to the Senate the draft of the proposed legislation. This was introduced on Thursday, March 18, as S. 1564,

by Senators Mansfield, Dirksen, and a bipartisan group of 64 other Senators, and the Senate adopted a motion to refer the bill to the committee with instructions to report it back by April 9, 1965.

On Tuesday, March 23, the committee began hearings. Attorney General Katzenbach, the first witness, appeared for 3 consecutive days, in support of the need for and the constitutionality of the legislation. The Attorney General was questioned at length on many aspects of the bill. On March 29, hearings were resumed, with Mr. Charles Bloch, an attorney from the State of Georgia, appearing in opposition to the bill. On March 30, Judge Leander H. Perez, representing Governor McKeithen of Louisiana, testified in opposition to the legislation.

The Acting Director of the Census, Mr. A. Ross Eckler, and Mr. John W. Macy, Chairman of the U.S. Civil Service Commission, appeared in support of the bill on March 31. The assistant attorney general of Georgia, Mr. Paul Rodgers, Jr., appeared in opposition. On April 1 further testimony was heard—from Senator Sparkman, of Alabama; Mr. John Kilpatrick, editor, of Richmond, Va., representing the Virginia Commission on Constitutional Government, the Honorable Robert Y. Button, attorney general of Virginia, Mr. Frederick Gray, former attorney general of Virginia, and Mr. Thomas Watkins, attorney, representing the Governor of Mississippi. On April 2, Mr. Frank Mizell, attorney, appeared to testify as representative of a number of registrars of the State of Alabama. A statement from Attorney General Bruton, of North Carolina, was introduced into the record. On April 5, the committee heard the views of Senator Williams of Delaware, Senator Stennis, of Mississippi, and Senator Thurmond, of South Carolina. On April 6, 7, 8, and 9, the committee concluded its consideration of the bill in executive session.

From the interchange of ideas with these competent witnesses, coming from various parts of the country and representing different points of view, and from the plentiful and pertinent documentary material supplied by committee members and witnesses, a meaningful record was developed. On April 9, in conformity with instruction of the Senate, the bill was reported with amendments but because of the differences previously noted and insufficient time to resolve them, no recommendation was made.

HISTORICAL BACKGROUND

(a) The 15th amendment and related legislation

The 15th amendment, ratified nearly a century ago, provides that neither the Federal Government nor any State shall deny or abridge the right to vote on account of race, color, or previous condition of servitude, and specifically authorizes the Congress to enforce its provisions by appropriate legislation.

In May 1870, immediately after ratification, a sweeping statute to enforce the right to vote was enacted, act of May 31, 1870, 16 Stat. 140. This act declared the right of all citizens to vote without distinction of race, color, or previous condition of servitude; subjected to criminal penalties State officials who failed to give all citizens equal opportunity to qualify to vote; and punished violence, intimidation, and conspiracies to interfere with registration or voting. U.S. attorneys, marshals, and commissioners were charged with arresting and prosecuting per-

sons who violated the act and interference with these Federal officers was made punishable as a crime.

Another statute was passed the following year providing for a system of Federal supervisors of elections, act of February 23, 1871, 16 Stat. 4313. Among the duties of these supervisors were inspection of registration books and supervision of registration, poll watching on election day, counting ballots cast, and certifying the results of elections.

While these measures were sweeping, their enforcement was ultimately ineffective, and by 1894 most of them had been repealed.

(b) Literacy tests and similar devices

Beginning in the early 1890's a number of States enacted legislation establishing new voting qualifications. Among them was the literacy test. Prior to 1890, apparently no Southern State required proof of literacy, understanding of constitutional provisions or of the obligations of citizenship, or good moral character, as prerequisites to voting. However, as the following table shows, these tests and devices were soon to appear in most of the States with large Negro populations.¹

1. Reading and/or writing: Mississippi (1890), South Carolina (1895), North Carolina (1900), Alabama (1901), Virginia (1902), Georgia (1908), Louisiana (1921). And see Oklahoma (1910).

2. Completion of an application form: Louisiana (1898), Virginia (1902), Louisiana (1921), Mississippi (1954).

3. Oral constitutional "understanding" and "interpretation" tests: Mississippi (1890), South Carolina (1895), Virginia (1902), Louisiana (1921).

4. Understanding of the duties and obligations of citizenship: Alabama (1901), Georgia (1908), Louisiana (1921), Mississippi (1954).

5. Good moral character requirement (other than nonconviction of a crime): Alabama (1901), Georgia (1908), Louisiana (1921), Mississippi (1960).

It is significant that in 1890, 69 percent or more of the adult Negroes in seven Southern States which adopted these tests were illiterate (Alabama, 78 percent; Louisiana, 77 percent; Georgia, 75 percent; Mississippi, 74 percent; South Carolina, 73 percent; North Carolina, 70 percent; Virginia, 69 percent). These percentages were much higher than comparable figures for white illiteracy (Alabama, 19 percent; Louisiana, 19 percent; Georgia, 17 percent; Mississippi, 13 percent; South Carolina, 18 percent; North Carolina, 25 percent; Virginia, 15 percent). See Compendium of the Eleventh Census, part III, page 316.

At the same time alternative provisions for qualifying to vote were adopted to assure that illiterate whites were not disfranchised. Thus, in Louisiana, North Carolina, and Oklahoma, white voters were exempted from the literacy test by a "voting" grandfather clause." Louisiana constitution, 1898, article 197, section 5; North Carolina

¹ A number of examples appearing in the committee record showing that these tests and devices were adopted to disfranchise the Negro. See, for example, *Ratliff v. Peall*, 74 Miss. 247, 20 S. Rept. 865, where the Mississippi Supreme Court, referring to the convention which adopted the Mississippi constitution of 1890 which contained literacy requirements, remarked that "within the field of permissible action under the limitations imposed by the Federal Constitution, the convention swept the circle of expedients to obstruct the exercise of the franchise by the Negro race." 74 Miss. 206. See also *United States v. Mississippi*, No. 73, October term 1964, decided Mar. 8, 1965 (Slip op. pp. 14-15).

constitution, 1876, article VI, section 4, as amended in 1900; Oklahoma constitution, 1907, article III, section 4a, as amended in 1910. The same result was accomplished in Alabama, Georgia, and Virginia by the so-called "fighting" grandfather clause." See Alabama constitution, 1901, section 180; Georgia constitution, 1877, article II, section 1, paragraph IV (1-2), as amended in 1908; Virginia constitution, 1902, section 19. Several of these States provided a separate exemption from the literacy requirement for property holders. See Louisiana constitution, 1898, article 107, section 4; Alabama constitution, 1901, section 181, second; Virginia constitution, 1902, section 19, third; Georgia constitution, 1877, article II, section 1, paragraph IV(5). And Alabama and Georgia additionally exempted persons of "good moral character" who understood "the duties and obligations of citizenship under a republican form of government." Alabama constitution, 1901, section 180, third; Georgia constitution, 1877, article II, section 1, paragraph IV(3), as amended in 1908. Another device, invented by Mississippi, and followed, for a time, by South Carolina and Virginia (and later Louisiana) offered white illiterates an opportunity to qualify by satisfying the registrar that they could "understand" and "interpret" a constitutional text when it was read to them. Mississippi constitution, 1890, section 244; South Carolina constitution, 1895, article II, section 4(c); Virginia constitution, 1902, section 19, fourth; Louisiana constitution, 1921, article VIII, section 1(d). For later registrants, South Carolina substituted a property alternative. South Carolina constitution, 1895, article II, section 4(d). The grandfather clause was struck down by the Supreme Court in 1915 (*Guian v. United States*, 238 U.S. 347) but the other devices remained and discrimination continued.

(c) *Other methods of discrimination*

The history of 15th amendment litigation in the Supreme Court—from the beginning (*United States v. Reese*, 92 U.S. 214; *Ex Parte Yarborough*, 110 U.S. 651) through the "grandfather clause" (*Guinn*, *supra*; *Myers v. Anderson*, 238 U.S. 368), and the "white primary" (*Nixon v. Herndon*, 273 U.S. 536; *Nixon v. Condon*, 286 U.S. 73; *Smith v. Allwright*, 321 U.S. 649; *Terry v. Adams*, 345 U.S. 461), the resort to procedural hurdles (*Lane v. Wilson*, 307 U.S. 268), to racial gerrymandering (*Gomillion v. Lightfoot*, 364 U.S. 339), to improper challenges (*United States v. Thomas*, 362 U.S. 58), and, finally, the discriminatory use of tests (*Schnell v. Davis*, 336 U.S. 933; *Alabama v. United States*, 371 U.S. 37; *Louisiana v. United States*, *supra*)—indicates both the variety of means employed to bar Negro voting and the durability of these discriminatory policies.

The barring of one contrivance has too often caused no change in result, only in methods. See dissenting opinion of Judge John Brown in *United States v. Mississippi*, 229 F. Supp. 925, *reversed and remanded*, — U.S. — (1965). The 15th amendment was intended to nullify "sophisticated as well as simple-minded modes of discrimination," *Lane v. Wilson*, 307 U.S. 268, 275 (1939).

RECENT CONGRESSIONAL EFFORTS TO ELIMINATE DISCRIMINATION: THE CIVIL RIGHTS ACTS OF 1957, 1960, AND 1964

In 1957, Congress enacted its first major civil rights statute since the Reconstruction era. The Civil Rights Act of 1957 authorized the

Attorney General to bring civil actions for injunctive relief to redress denials of the right to vote on account of race or color. He was also authorized to seek injunctive relief against intimidation, threats, or coercion for the purpose of interfering with the right to vote in Federal elections.

The 1957 act also created the Civil Rights Commission and charged it with investigating denials on the right to vote and other matters.

The act's impact on eliminating voting discrimination has been disappointing. The inability to gain access to voting records impeded effective enforcement of the act. In one suit, it was held that where registrars had resigned there was no one who could be sued since the act, in the view of the Court, did not authorize suit against the State as such. *United States v. Alabama*, 171 F. Supp. 720 (M.D. Ala. 1959), *affirmed*, 287 F. 2d 808 (C.A. 5, 1961). While this case was pending in the Supreme Court, Congress enacted the Civil Rights Act of 1960, which contained a provision specifically authorizing joinder of a State as a party defendant.

The 1960 statute also amended the 1957 act in two other significant respects. First it required election officers to retain and preserve voting records and to permit the Attorney General or his representatives to inspect and photograph the records. Second, it provided that if, in a suit under the 1957 act the court finds that discrimination has been pursuant to a "pattern or practice," persons who are thereafter refused registration by State officials may apply directly to a Federal court or a voting referee, and that the court or referee shall issue an applicant a certificate entitling him to vote if he is found qualified under State law, and "qualified under State law" was defined to mean qualifications not more stringent than those required of persons who were registered by State officials in the past.

Additional modifications in the voting laws were made in the Civil Rights Act of 1964. Title I of that act provided for the expedition of voting suits and their trial before a three-judge district court with a direct appeal to the Supreme Court. The 1964 statute also prohibited, with respect to registration conducted under State law for elections held solely or in part for Federal offices, (i) the use of voting qualifications, practices, and standards different from those applied under such law to other individuals in the past; (ii) the rejection of applicants because of immaterial errors or omissions made by applicants filling out registration forms; and (iii) the use of literacy tests as a qualification for voting unless they are administered and conducted wholly in writing. The statute further established a rebuttable presumption of literacy flowing from the completion of six grades in any recognized school.

THE ADEQUACY OF THE CIVIL RIGHTS ACTS OF 1957, 1960, AND 1964

Experience has shown that the case-by-case litigation approach will not solve the voting discrimination problem. The statistics alone are conclusive. In Alabama in 1964 only 19.4 percent of voting age Negroes were registered to vote, an increase of only 9.2 percent since 1958. In Mississippi approximately 6.4 percent of voting age Negroes were registered in 1964, compared to 4.4 percent 10 years earlier. And in Louisiana Negro registration appears to have increased only one-tenth of 1 percent between 1958 and 1965.

The inadequacy of existing laws is attributable to both the intransigence of local officials and dilatory tactics, two factors which have largely neutralized years of litigating effort by the Department of Justice. The former Assistant Attorney General in charge of the Civil Rights Division, Mr. Burke Marshall, stated in his recent book, "Federalism and Civil Rights," at page 16:

When the will to keep Negro registration to a minimum is strong, and the routine of determining whose applications are acceptable is within the discretion of local officials, the latitude for discrimination is almost endless. The practices that can be used are virtually infinite.

Mr. Marshall also described the first four cases filed in 1961 as "characterized by seemingly endless litigation to bring about minimal results," *id.* at 32. The history of one of those cases—filed against the Board of Registrars of Dallas County, Ala.—illustrates this failure of existing law.

Dallas County, with Selma as the county seat, has a voting-age population of approximately 29,500, of whom 14,500 are white persons and 15,000 are Negroes. In 1961, 9,195 of the whites—64 percent of the voting-age total—and 156 Negroes—1 percent of the total—were registered to vote in Dallas County.

On April 13, 1961, the Government filed a lawsuit against the county board of registrars under the Civil Rights Acts of 1957 and 1960. The district court and the court of appeals found that the registrars in office when the suit was filed had been engaging for years in a pattern and practice of discrimination against Negroes. But when the case came to trial 13 months later, those registrars had resigned and new ones had been appointed. Although there was proof of discrimination by prior registrars, including the misuse of the application form as a test, the court found that the present registrars were not discriminating and it declined to issue an injunction. The Court of Appeals for the Fifth Circuit reversed, and, among other things, it disapproved the rejection of one Negro applicant for lack of "good moral character" without a hearing and on the basis of rumor and gossip. However, the court of appeals rejected the Government's contention that the registrars should be required to apply to Negroes the same standards applied to whites during the period of discrimination.

This form of relief, usually characterized as "freezing relief," is embodied in the voting referee provision of the Civil Rights Act of 1960 (42 U.S.C. 1971(e)) and, in recent cases, the court of appeals has applied the "freezing" principle. (See, *United States v. Mississippi (Walthall County)*, 339 F. 2d 679 (C.A. 5, 1964); *United States v. Duke*, 332 F. 2d 759 (C.A. 5, 1964)), as has the Supreme Court; *Louisiana v. United States*, — U.S. — (Mar. 8, 1965). But the failure to secure "freezing" relief in the first Dallas County appeal spelled substantial failure of 2½ years of effort to end voting discrimination in that county.

The Dallas County Board of Registrars continued to discriminate after the injunction was issued. It was proved at the second trial that between May 1962 and August 1964 795 applications for registration had been filed by Negroes but that only 93—12 percent of the Negro applicants—had been registered. During the same period, 945 of 1,232

white applicants—more than 75 percent—were registered. The court found that specific discriminatory practices were still used, including the manipulation of literacy requirements. It pointed out that the registrars had raised the standards for both Negro and white applicants; that the percentage of rejections for both races had more than doubled since the first trial in May 1962. Only a token number of Negroes were registered. These discriminatory practices assured that white political supremacy was unlawfully maintained in Dallas County.

In February 1964, an additional barrier to Negro registration was erected when registrars throughout Alabama, including those in Dallas County, began using a new application form which included a difficult literacy and knowledge-of-government test. In September 1964 another, and still more difficult test, prescribed by the State supreme court, was adopted and administered by the Dallas County registrars. Because registration in Alabama is permanent, the great majority of white voters in Selma, already registered under easier standards, were not required to pass these tests, so that, as a practical matter, it was applied almost exclusively to the unregistered Negroes.

On February 4, 1965, nearly 4 years after suit was originally filed, the district court entered a second decree which, among other things, enjoined use of the new literacy and knowledge-of-government tests and dealt with serious problems of delay in processing applications for registration.

The effectiveness of the litigation approach in Selma, Ala., is to be judged, in large measure, by the fact that less than 3 percent of the voting age Negroes in Dallas County are registered to vote.

The voting referee provisions have also proved inadequate in Perry County, Ala. In August 1962, a suit was brought against the Perry County Board of Registrars under the Civil Rights Acts of 1957 and 1960, alleging racial discrimination against Negro applicants for voter registration. As the court found, at that time 3,100 white persons—90 percent of the adult whites—and 257 Negroes—5 percent of the adult Negroes—were registered to vote. After a trial in October 1962, the Federal district court in November enjoined the board of registrars from discriminating and from engaging in a number of specific discriminatory practices, including the rejection of applicants for inconsequential errors on the application form.

In January 1963, civil contempt proceedings were initiated, on the ground that the board had defied the court's order. At the same time, and in order to bring about the registration of qualified Negroes, the voting referee machinery of the 1960 act—which permits application for registration to be made directly to the court or to a voting referee—was invoked by 173 Perry County Negroes who wrote letters to the Federal district court explaining that their applications for registration had been rejected by the State registrars since the court's decree and asking the court's help. The relief provided by the court was to order the board of registrars to meet on special registration days and reconsider the qualifications of those who had written the letters. The board of registrars met, reconsidered, and again rejected most of these Negro applicants.

During August and September 1963, an additional 175 letters were filed in the district court. Again the court did not consider them

directly, ruling that these letters "do not contain requisite information to qualify them as applications" under the statute.

In July 1964, the court of appeals reversed, directed the district court to process the applications, and suggested that "the judge may well find it helpful to utilize the services of a referee."

In September 1964, the district court appointed a practicing attorney from nearby Hale County, Ala., to act as referee. The referee notified the Negroes who had written letters to the court that he would hold hearings on their applications, and 134 Negroes presented themselves to demonstrate their qualifications.

Although the statute provides that in judging the applicant's qualifications to vote, the standards used may be no more stringent than those previously applied to white applicants during the period of discrimination, and although virtually no standards of literacy had been imposed in the past, the referee administered to the Negroes a knowledge-of-government test and a literacy test. He also subjected them to an oral dictation test, notwithstanding the earlier enactment of the 1964 Civil Rights Act requiring literacy tests to be "wholly in writing."

Following the hearings, the referee filed his reports in the district court, recommending the rejection of 110 of the 134 Negroes. On November 18, the district court confirmed the referee's report in all respects.

The Department of Justice appealed and, this time, obtained an order expediting the hearing of the appeal, which is now set for argument on May 20, 1965—over 2 years after the first applications were filed in the district court under the voting referee provisions of the Civil Rights Act of 1960.

The history of the Perry County case points up some of the inadequacies of the voting referee machinery of the 1960 act. Delay is one defect. Because the government must challenge the referee's decisions, the 1960 act has the effect of interjecting yet another stage of litigation into the case. There are other defects. The remedy is not applicable at all until the Government has brought and won a lawsuit and proved discrimination "pursuant to a pattern or practice." The statute requires that referees be qualified voters of the Federal judicial district. In some districts, because of community pressures, this is difficult.

DISCRIMINATORY MISUSE OF TESTS AND DEVICES IS A WIDESPREAD PRACTICE

The most graphic evidence of the use of tests and devices to deny or abridge the right to vote on account of race or color appears in tables submitted for the record by the Department of Justice (apps. G, H, and I). These tables show that the Department has instituted 12 voting discrimination suits in Alabama, 22 in Mississippi, and 14 in Louisiana.

The results of the suits which have gone to judgment to date are striking. No voting discrimination suit has ever been concluded without a judicial finding of racial discrimination by either the district court or the court of appeals. In Alabama eight cases have been decided, and the courts have found discriminatory use of tests and devices in all eight. In Mississippi nine cases have been decided, and the courts have found discriminatory use of tests and devices in all

nine. Again, in Louisiana, nine cases have been decided, and the courts have found discriminatory use of tests and devices in all nine.

Nor has the abuse of tests and devices in these instances reflected only isolated deviations from the norm. In all eight decided cases in Alabama the courts have found that the discriminatory use of tests or devices has been pursuant to a "pattern or practice" of racial discrimination. In seven of the nine concluded lawsuits in Louisiana a pattern or practice has been found, and, of the other two, the pattern or practice issue is yet to be decided by the court in one case, and the other was decided prior to enactment of the 1960 Act which first enacted into law the pattern or practice concept. And in Mississippi, of the nine cases decided by the district courts, a pattern or practice has been found by the courts in five cases, the defendants have admitted a pattern or practice in two others, and appeals are currently pending in the other two.

For example, in *United States v. Louisiana* (225 F. Supp. 353 (E.D. La. 1963)), where the United States challenged the validity of the State's constitutional interpretation test, the three-judge court found "massive evidence that the registrars [in a number of different counties] discriminated against Negroes not as isolated or accidental or unpredictable acts of unfairness by particular individuals, but as a matter of State policy in a pattern based on the regular, consistent predictable unequal application of the tests" (225 F. Supp. 381). The Supreme Court, affirming the district court, found that the constitutional interpretation test "as written and applied was part of a successful plan to deprive Louisiana Negroes of their right to vote."

Similarly, the application form has often been used as a test which only Negroes must "pass" in order to qualify. In *United States v. Alabama* (334 F. 2d 583 (C.A. 5)), the court of appeals found that the requirement of filling out a lengthy application form "became the engine of discrimination" because whites "were given frequent assistance in determining the correct answers" whereas "Negroes not only failed to receive assistance, [but] their applications were rejected for slight and technical errors" (304 F. 2d 587). Similarly, in Panola County, Miss., the court of appeals found the application form "was treated largely as an information form when submitted by a white person" but as "a test of skill for the Negro" (*United States v. Duke*, 332 F. 2d 759, 767 (C.A. 5)).

Another example of the difference in treatment accorded whites and Negroes occurred in George County, Miss., where Negro college graduates were rejected while a white applicant was registered who gave the following interpretation of a State constitutional provision that "there shall be no imprisonment for debt": "I think that a Neorger should have 2 years in college be fore voting be cause he don't understand." He also had explained to the registrar's evident satisfaction that the duties and obligations of citizenship were "under Standing of pepper & Government ship bessing."

Often whites are not made to take the tests at all. See *United States v. Olement* (231 F. Supp. 913 (W.D. La.)), where Judge Dawkins said:

Professionally trained Negroes [including public school principals and teachers] were rejected on the basis of the oral test, while white persons with sixth grade education and less were registered without taking the test at all.

To the same effect, see *United States v. Duke*, *supra*; *United States v. Mississippi (Walthall County)* (339 F. 2d 679 (C.A. 5)); *United States v. Raines* (189 F. Supp. 121 (N.D. Ga.)); *United States v. Wilder* (222 F. Supp. 749 (W.D. La.)); *United States v. Crawford* (229 F. Supp. 898 (W.D. La.)); *United States v. Ramsey* (8 R.R.L.R. 156 (S.D. Miss.)), *affirmed*, 331 F. 2d 824 (C.A. 5)).

Similar examples of discriminatory misuse of literacy tests and devices, including misuse of the application form as a test, can be found in *United States v. McElveen* (180 F. Supp. 10 (E.D. La.)), *affirmed*, 382 U.S. 580; *United States v. Atkins* (323 F. 2d 733 (C.A. 5)); *United States v. Penton* (212 F. Supp. 193 (M.D. Ala. 1962)); *United States v. Parker* (236 F. Supp. 511 (M.D. Ala. 1964)); *United States v. Mississippi (Walthall County)*, *supra* (C.A. 5 1964); *United States v. Lynd* (301 F. 2d 818 (C.A. 5), certiorari denied, 371 U.S. 893 and 321 F. 2d 26 (C.A. 5), certiorari denied, 375 U.S. 968); *United States v. Raines*, *supra*; *United States v. Fow* (211 F. Supp. 25 (E.D. La.)), *affirmed*, 334 F. 2d 449 (C.A. 5, 1964); *United States v. Clement* (231 F. Supp. 913 (W.D. La. 1964)); *United States v. Wilder*, *supra*; *United States v. Ramsey*, *supra*; *United States v. Cartwright* (230 F. Supp. 873 (M.D. Ala.)); *United States v. Hines* (9 R.R.L.R. 1332 (N.D. Ala.)); *United States v. Crawford* (229 F. Supp. 898 (W.D. La.)); *United States v. Association of Citizen Councils* (196 F. Supp. 908 (W.D. La.)); *United States v. Ford* (9 R.R.L.R. 1330 (S.D. Ala.)); *United States v. Cow* (— R.R.L.R. — (N.D. Miss.)); *United States v. Atkins* (— F. Supp. — (S.D. Ala. 1965)); *United States v. Campbell* (— F. Supp. — (N.D. Miss. 1965)).

Tests of knowledge of a wide variety of subjects, including the duties and obligations of citizenship, have been used for discriminatory purposes or with a discriminatory effect (*United States v. Atkins*, — F. Supp. — (S.D. Ala. 1965); *United States v. Atkins*, 323 F. 2d 733 (C.A. 5); *United States v. Parker*, 236 F. Supp. 511 (M.D. Ala. 1964); *United States v. Louisiana*, 225 F. Supp. 553 (E.D. La.), *affirmed*, — U.S. — (March 8, 1965)), including requirements that the applicant know, understand, or interpret his exact age in years, months, and days (*United States v. McElveen*, 190 F. Supp. 10, 12-13 (E.D. La.), *affirmed*, 382 U.S. 580) or knowledge of local government (as in *United States v. Ward*, (S.D. Miss.) appeal pending (C.A. 5)).

Decisions in cases filed by the Department of Justice show that illiterate whites have been registered in Mississippi in at least Clarke, Forrest, George, Panola, Sunflower, Tallahatchie and Walthall Counties. In Alabama illiterate whites were registered at least in Macon and Sumter Counties. In Louisiana illiterates were registered in Jackson and Plaquemines Parishes.

Indeed, the practice of registering illiterates is doubtless much more common than these cases reveal. Often it was not essential to the government's cases to show this because of other practices which disguise the registration of illiterate whites, e.g., simple failure to administer tests to whites at all, assisting whites in filling out forms and answering questions, allowing whites to register by merely signing the registration book, registration by proxy, and the like.

Thus, in Dallas County, over a 6-year period 47 percent of white application forms were filled out by someone other than the applicant, and the answers to one question on 1,160 of these forms were

proved by expert handwriting analysis to have been filled out by a registrar.

The voucher requirement has similarly been used to effect discrimination. Registrars have required Negroes, but not whites, to produce supporting witnesses to vouch for them (*United States v. Ward*, 222 F. Supp. 617 (W.D. La.)). Registrars have required Negroes to produce whites to vouch for them (*United States v. Hines*, *supra*; *United States v. Manning*, 205 F. Supp. 172 (W.D. La.); *United States v. Logue*, — F. Supp. — (S.D. Ala.), appeal pending (C.A. 5); *United States v. Ward*, *supra*), and registrars have helped whites, but not Negroes, in obtaining supporting witnesses (*United States v. Hines*, *supra*).

And "good moral character" requirements have also been instruments of discrimination. In addition to the Dallas County incident earlier described (*United States v. Atkins*, 323 F. 2d 733 (C.A. 5)), such misuse has been challenged in a number of pending suits. *E.g.*, *United States v. Ward* (No. 21,717 (George County, Miss.) (C.A. 5)); *United States v. Daniel* (Jefferson Davis County, Miss.) (S.D. Miss.); *United States v. Bellamyder* (Jefferson County, Ala.). Thus in George County, Miss., a Negro was rejected for bad character on the basis of "complaints" of immoral conduct on his part, without any opportunity for him to rebut the "charge."

These practices often continue despite the entry of court decrees. To cite but one example, in *United States v. Penton* (212 F. Supp. 193 (M.D. Ala.)), the district court, noting that it had previously decided two voting rights suits, said that "in spite of these prior judicial declarations, the evidence in this case makes it clear that the defendant State of Alabama * * * continues in the belief that some contrivance may be successfully adopted and practiced for the purpose of thwarting equality in the enjoyment of the right to vote by citizens of the United States * * *." Even after the district court's decision in *Penton*, the discriminatory activity continued. In *United States v. Parker* (236 F. Supp. 511 (M.D. Ala.)), decided December 17, 1964, the court found that since its previous order in *Penton*, the Board of Elections of Montgomery County had instituted a "new application form * * * as a means for continuing the rejection of qualified Negro applicants. * * *" Court orders have also been evaded or disregarded in Forrest and Tallahatchie Counties in Mississippi, Dallas, Perry, Bullock, and Macon Counties in Alabama, and Plaquemines Parish in Louisiana, to cite just some instances.

Moreover, the Department of Justice has filed actions alleging that Mississippi, Alabama, and Louisiana have each enacted new and more onerous qualifications laws which discriminate against Negroes even if fairly administered, since registration is permanent in these States and the vast majority of Negroes barred unlawfully in the past must now submit to these new tests or devices while most of the whites have a lifetime exemption. See *United States v. Board of Registration of Louisiana* (E.D. La.); *United States v. Mississippi* (— U.S. — (March 8, 1965)); *United States v. Louisiana* (— U.S. — (March 8, 1965)); *United States v. Baggett* (M.D. Ala.).

These facts speak clearly: In widespread areas of several States tests and devices as defined in this bill have been effectively used to deny or abridge the right to vote on account of race or color.

THE MEANS CHOSEN FOR "TRIGGERING" THE SUSPENSION OF TESTS AND DEVICES AND FOR AUTHORIZING APPOINTMENT OF EXAMINERS

Section 3 of the bill as reported follows the judicial remedy tradition by providing for suspension of tests and devices and appointment of examiners after a judicial determination has been made that violations of the 15th amendment have occurred (except that examiners may be appointed as part of interlocutory judicial relief).

Under section 4, however, tests or devices would be suspended, and the appointment of examiners authorized, upon the coincidence of three factors: (1) Where such tests or devices were maintained as a qualification for voting on November 1, 1964; (2) where less than 50 percent of persons of voting age (other than aliens, and military personnel and their dependents) were registered to vote on November 1, 1964, or voted in the presidential election of 1964; and (3) where more than 20 percent of the 1960 voting age population was non-white. In addition, tests and devices would be suspended and examiners authorized whenever the Attorney General requests and the Census Director determines by a survey that fewer than 25 percent of persons of voting age of any race or color are registered to vote at the time of the survey.²

The record before the committee leaves no doubt that, where the three factors described above are present, low electoral participation is almost always the result of racially discriminatory use of tests and devices. The evidence supporting this conclusion is overwhelming.

In the presidential election of 1964, ballots were cast by 62 percent of the American electorate. (See app. A.) Only 17 States fell below the national average. In 9 of these 17 States, fewer than 50 percent of the persons of voting age voted in the presidential election of 1964. Of these nine States, seven employed tests or devices. A survey of registration data in six of these States (Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia) indicates that a large proportion of nonwhites of voting age are not registered to vote. (See app. C.) In these States the low percentage of persons who voted in the presidential election of November 1964 reflects the large numbers of nonwhites of voting age who were not registered. Only in Virginia is less than 20 percent of the voting age population nonwhite. However, in 43 of 130 political subdivisions (counties and independent cities) in Virginia, in which less than 50 percent of the voting age population, excluding aliens and persons in active military service and their dependents, the nonwhite voting age population is more than 20 percent of the total.

While evidence of racial discrimination in the voting process has been found in at least five of these States—Alabama, Mississippi, Louisiana, South Carolina and Georgia—the Department of Justice has focused its efforts primarily on areas where voting discrimination has been most severe.

We have described earlier the large number of lawsuits brought by the Department of Justice in Alabama, Louisiana, and Mississippi, the number of court findings of discrimination by abuse of tests and devices, the number of findings of a pattern or practice of discrimination, and the fact that no voting discrimination case brought by the De-

² The undersigned hold differing views with respect to this provision. It is not discussed further herein.

partment has ever been concluded without a finding of discrimination. The statistics for counties in which these numerous suits were brought uniformly support the conclusion we have reached that low registration and voting has been the result of racially discriminatory use of tests and devices.

Thus, in the Alabama counties where suits were brought by the Department of Justice, the figures show a substantial nonwhite voting age population, a high percentage of white registration, a low percentage of nonwhite registration and low voter turnout in the presidential election of 1964. (See app. D.) Similarly, in the Mississippi counties where suits were instituted, the statistics again reveal a substantial nonwhite voting age population, a high percentage of white registration and a low voter turnout in the presidential election. (See app. F). And the statistical pattern holds true in Louisiana: a substantial nonwhite voting age population in each county where a suit has been filed, a high percentage of whites registered, a low percentage of nonwhites registered, and a low voter turnout in the last presidential election. (See app. E.)

An analysis of the registration data for the States covered by section 4(b) (1) and (2) reveals a similar pattern: a substantial nonwhite voting age population, a high percentage of white registration, a low percentage of nonwhite registration, a low voter turnout in the presidential election of 1964, and the use of a test or device. (See app. C.)

Another similarity exists among the States of Alabama, Georgia, Louisiana, Mississippi, and South Carolina. Each has had a general public policy of racial segregation evidenced by statutes in force and effect in the areas of travel, recreation, schools and hospital facilities. (See app. J.) Of the 21 States which maintain a test or device (see app. B), there are only 3, other than these 5, which have had a policy of racial segregation reflected by their laws. In one of these, North Carolina, 29 out of 100 political subdivisions are covered by the bill. In another, Virginia, 43 out of 130 political subdivisions are covered. The third, Delaware, is a State whose statutes now reflect a reversal of that policy. This reversal is evidenced by the recent enactment of antidiscrimination statutes in areas of public accommodations and employment.

On the other hand, in most of the States which maintain tests or devices but in which more than 50 percent of the voting age population voted in the presidential election of 1964 there are statutes prohibiting racial discrimination in education, public accommodations, employment, and housing. (See app. K.) Since these States express, in so many areas, a public policy against racial discrimination, it may be assumed—and the record shows no contrary evidence—that discrimination in voting on account of race does not exist.

In conclusion it appears—

(a) that where there is a substantial nonwhite voting age population;

(b) that where tests or devices are used; and

(c) that where there is low voter participation—

this low voter participation and accompanying low nonwhite registration almost always is caused by the discriminatory use of tests or devices in violation of the 15th amendment.

Section 4(a) provides for an "escape clause" under which a State or separate subdivision as to which the determinations provided for in section 4(b) (1) and (2) have been made as a separate unit may come into the District Court for the District of Columbia and show that no test or device has been used in a discriminatory manner during the 5 preceding years. This means that in such an area where in fact discrimination has been for that period and is nonexistent—assuming such an area to exist—that fact may be shown and the prohibition on tests and devices lifted accordingly. The 5-year period was selected in order to provide for an appropriate period of proof of the elimination of the effects of past discrimination.

The undersigned support the provisions of the bill which provide for the appointment of examiners under the circumstances set forth in the bill. History has shown that suspension of the tests and devices alone would not assure access of all persons to voting and registration without regard to race or color. The maladministration of tests and devices has been the major problem. Other tactics of discrimination, however, have been used and could readily be resorted to by State or local election officials where tests and devices have been suspended.

That this is so is demonstrated by two recent actions in Louisiana and Alabama. The registrars in East and West Feliciana Parishes were enjoined by the three-judge district court in *United States v. Louisiana* (225 F. Supp. 353 (E.D. La. 1963)), affirmed, — U.S. — (Mar. 8, 1963)), from using various State literacy tests. Their response was to close the registration office thus freezing the existing unlawful registration disparity in those parishes. In Dallas County, Ala., the registrars (as found by the district court) slowed down the pace of registration so as to prevent any appreciable number of Negroes, qualified or not, from completing the registration process. The appointment of examiners is the effective answer to such tactics.

We have also provided for the suspension of tests and devices until such time as the court determines that the State or subdivision has been for a 5-year period and is free of discrimination. Our reasons are as follows:

First, it appears from the history of the adoption of the tests and devices coupled with their record of their administration in the pertinent areas that they were not intended to and do not serve any purpose but to disenfranchise Negroes. In effect, these States and subdivisions have chosen not to have tests and devices because they are not applied to all applicants to register and vote. Under these circumstances we believe the applicable rule to be that declared by the late Mr. Justice Felix Frankfurter:

It would be a narrow conception of jurisprudence to confine the notion of "laws" to what is found written on the statute books, and to disregard the gloss which life has written upon it. Settled State practice cannot supplant constitutional guarantee, but it can establish what is State law. The equal protection clause did not write an empty formalism into the Constitution. Deeply embedded traditional ways of carrying out State policy, * * * are often tougher and truer law than the dead words of the written text (*Nashville, O. & St. L. Ry. v. Browning*, 310 U.S. 362, 369 (1940)).

In suspending the use of tests and devices, Congress would be applying to Negroes the "law" applied to whites.

Second, many tests and devices used in these States are not susceptible of fair administration. For example, this is the case with respect to the requirement that registered voters must vouch for new applicants in areas where practically no Negroes are registered and where whites cannot be found to vouch for Negroes.

Third, many State laws setting high registration requirements have been recently enacted following a long period of racial discrimination. Fair administration would freeze the present white-Negro registration disparity created by past violations of the 15th amendment. As the Supreme Court stated in *United States v. Louisiana* (— U.S. — (Mar. 8, 1965)), under such circumstances the laws ought not to be applied.

Fourth, the educational differences between whites and Negroes in the areas to be covered by the prohibitions—differences which are reflected in the record before the committee—would mean that equal application of the tests would abridge 15th amendment rights. This advantage to whites is directly attributable to the States and localities involved.

Fifth, it would be unfair to apply these tests or devices to Negroes in States whose voting laws were enacted while large numbers of Negroes were illegally disenfranchised and had no say in the adoption of the laws. The proper solution is to enfranchise the Negroes on the same terms as the whites have been permitted to vote and then, after a period of time during which equal voting rights are exercised, permit the people to determine such qualifications as they desire. This is what the bill will do.

Sixth, as described, local officials commonly have not applied the tests and devices to whites. If examiners were required to administer them, there is risk that, while examiners were applying them to Negroes who apply, whites would be registered by local officials who would not be requiring compliance.

We are also of the view that an entire State covered by the test and device prohibition of section 4 must be able to lift the prohibition if any part of it is to be relieved from the requirements of section 4. The statewide ban is a prophylactic measure grounded on the probability of future discrimination throughout the State even if it may not now exist in some areas. As the Supreme Court said about title II of the Civil Rights Act of 1964:

With this situation spreading as the record shows, Congress was not required to await the total dislocation of commerce. * * * "Congress was entitled to provide reasonable preventive measures * * *." (*Katzenbach v. McClung*, 379 U.S. 294, 301).

Moreover, in most of the States affected by section 4 local boards of registration are so closely and directly controlled by and subject to the direction of State boards of election—and, indeed, the State legislature—that they would be required to misapply tests and devices, irrespective of their own inclinations, if this suited the general policy of the State government.

CONSTITUTIONALITY *

The proposed legislation implements the explicit command of the 15th amendment that "the right * * * to vote shall not be denied or abridged * * * by any State on account of race [or] color."

1. *The power of Congress*

Section 2 of the amendment says, with respect to the 15th article of amendment: "The Congress shall have power to enforce this article by appropriate legislation" (Amend. XV., § 2). Here, then, we draw on one of the powers expressly delegated by the people and by the States to the Congress—the power to prevent the denial or abridgment of the right to vote on account of race or color.

No statute confined to enforcing the 15th amendment exemption from racial discrimination in voting has ever been voided by the Supreme Court. The criminal laws involved in the cases of *United States v. Reese* (92 U.S. 214), and *James v. Bowman* (190 U.S. 127), were held bad because they purported to punish interference with voting on grounds other than race. Indeed, in *Reese* (92 U.S. at 218), and again in *Bowman* (190 U.S. at 138-139), the Supreme Court expressly recognized the power of Congress to deal with racial discrimination in voting:

If citizens of one race having certain qualifications are permitted by law to vote, those of another having the same qualifications must be. Previous to this amendment, there was no constitutional guarantee against this discrimination: now there is. It follows that the amendment has invested the citizens of the United States with a new constitutional right which is within the protecting power of Congress. That right is exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude. This, under the express provisions of the second section of the amendment, Congress may enforce by "appropriate legislation."

(See also *United States v. Raines*, 362 U.S. 17 (1957 act); *United States v. Thomas*, 362 U.S. 58 (same); *Hannah v. Larche*, 363 U.S. 420 (Civil Rights Commission rules under 1957 act); *Alabama v. United States*, 371 U.S. 37 (1960 act); *United States v. Mississippi*, No. 73, this term, decided Mar. 8, 1965 (same); *Louisiana v. United States*, No. 67, this term, decided Mar. 8, 1965 (same).)

It remains only to see whether the means suggested are appropriate. In the case of *Ex Parte Virginia*, already referred to, still speaking of the three postwar amendments, the Court continues (100 U.S. at 345-346):

Whatever legislation is appropriate, that is, adapted to carry out the objects the amendments have in view, whatever tends to enforce submission to the prohibitions they contain, and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against State denial or invasion, if not prohibited, is brought within the domain of congressional power.

* This section of the statement is not intended to comment upon or discuss the constitutionality of sec. 9, the poll tax provision.

See, also, *Everand's Breweries v. Day* (265 U.S. 545, 558-559), applying the same standard to the enforcement section of the prohibition (18th) amendment. And, see *United States v. Raines* (362 U.S. 17, 25).

2. Relationship of this bill to the right of the States to fix qualifications for voting

Article I, section 2, and the 17th amendment to the Constitution permits the right of the States to fix the qualifications for voting. However, the 15th amendment outlaws voting discrimination, whether accomplished by procedural or substantive means. The restriction of the franchise to whites in the Delaware constitution was a "voting qualification." Thus it had to bow before the 15th amendment (*Neal v. Delaware*, 103 U.S. 370). So did the grandfather clauses of Oklahoma and Maryland, which were also substantive qualifications (*Guinn v. United States*, 238 U.S. 347; *Myers v. Anderson*, 238 U.S. 368). Nor are only the most obvious devices reached. As the Court said in *Lane v. Wilson* (307 U.S. 268, 275): "The amendment nullifies sophisticated as well as simple-minded modes of discrimination." Literacy tests and similar requirements enjoy no special immunity. In *Lassiter v. Northampton Election Board* (360 U.S. 45), the Court found no fault with a literacy requirement, as such, but it added: "Of course, a literacy test, fair on its face, may be employed to perpetuate that discrimination which the 15th amendment was designed to uproot" (Id. at 53). See, also, *Gray v. Sanders* (372 U.S. 368, 379). Furthermore, as the opinion in *Lassiter* notes, the Court had earlier affirmed a decision annulling Alabama's literacy test on the ground that it was "merely a device to make racial discrimination easy" (360 U.S. at 53). (See *Davis v. Schnell*, 336 U.S. 933, affirming 81 F. Supp. 872.) The Supreme Court has also just voided one of Louisiana's literacy tests (*Louisiana v. United States*, No. 67, this term, decided March 8, 1965). Mr. Justice Frankfurter, speaking for the Court in *Gomillion v. Lightfoot* (364 U.S. 339, 347), a 15th amendment case said:

When a State exercises power wholly within the domain of State interest, it is insulated from Federal judicial review. But such insulation is not carried over when State power is used as an instrument for circumventing a federally protected right.

Thus, so long as State laws or practices erecting voting qualifications do not run afoul the 15th amendment or other provisions of the Constitution, they stand undisturbed. But when State power is abused, it is subject to Federal action by Congress as well as by the courts under the 15th amendment. That was expressly affirmed in the *Lassiter* case where the Supreme Court said that "the suffrage * * * is subject to the imposition of State standards which are not discriminatory and which do not contravene any restriction that Congress, acting pursuant to its constitutional powers, has imposed" (360 U.S. 51).

3. The appropriateness of legislation

The factual background is always relevant in assessing the constitutional "appropriateness" of legislation. See, e.g., *Chicago Board of Trade v. Olsen*, 262 U.S. 1, 32; *Labor Board v. Jones & Laughlin*,

301 U.S. 1, 43; *Wickard v. Filburn*, 317 U.S. 111, 125-128; *United States v. Gainey*, No. 13, this term, decided March 1, 1965. The rule applies in the area of persistent racial discrimination. See, e.g., *Brown v. Board of Education*, 347 U.S. 483; *Eubanks v. Louisiana*, 356 U.S. 584; *Griffin v. School Board*, 377 U.S. 218; *Louisiana v. United States*, No. 67, this term, decided March 8, 1965.

There can be no doubt about the present need for Federal legislation to correct widespread violations of the 15th amendment. The prevailing conditions in those areas where the bill will operate offer ample justification for congressional action: because there is little basis for supposing that about action, the States and subdivisions affected will themselves remedy the present situation in view of the history of the adoption and administration of the several tests and devices reached by the bill.

The choice of the means to solve a problem within the legitimate concern of the Congress is largely a legislative question. What the Supreme Court said in sustaining the constitutionality of the Civil Rights Act of 1964 is fully applicable:

* * * where we find that the legislators, in light of the facts and testimony before them, have a rational basis for finding a chosen regulatory scheme necessary to the protection of commerce, our investigation is at an end. * * * (*Katzbach v. McClung*, 379 U.S. 294, 303-304).

In enforcing the 15th amendment Congress may forbid the use of voter qualification laws where necessary to meet the risk of continued or renewed violations of constitutional rights even though, in the absence of the course of illegal conduct predicated upon the use of such tests, the same State laws might be unobjectionable.

The bill provides a means for a State or subdivision to show that it is not in violation of the 15th amendment. There is ample precedent for that procedure. See e.g., Emergency Price Control Act of 1942, section 203(a), 56 Stat. 23; Civil Rights Act of 1964, section 709(c), 78 Stat. 241, 263, 42 U.S.C.A. 2000a-8(c); Interstate Commerce Act, section 204(a) (4a), 49 U.S.C. 304(a) (4a); Securities and Exchange Commission Rule 10 B-8(f), promulgated pursuant to Securities Exchange Act of 1934, 15 U.S.C. 78j(b). Congress has also previously established a single forum for determining questions of national concern, and the Supreme Court has approved its action. See Emergency Price Control Act of 1942, section 204(a), (d), 56 Stat. 23; *Locketry v. Phillips*, 319 U.S. 182.

ANALYSIS OF THE BILL

The title of the bill has been amended to indicate that this is a bill to enforce the 15th amendment to the Constitution and "for other purposes."

Section 1

The first section states that the title of the statute is the "Voting Rights Act of 1965."

Section 2

This section grants to all citizens of the United States a right to be free from enactment or enforcement of voting qualifications or prerequisites to voting or procedures, standards, or practices which deny

or abridge the right to vote on account of race or color. The section is the same as introduced except that changes have been made to make clear that the rights protected are those of citizens of the United States and to set out with more specificity the breadth of those rights and to harmonize the language with title I of the Civil Rights Act of 1964.

Section 3

This section affords a means of dealing with denial or abridgement of the right to vote on account of race or color wherever it may occur throughout the States or subdivisions of the United States. Nothing in this section is intended to limit the powers of a court under statutes previously enacted.

Subsection 3(a).—The bill as introduced did not contain an equivalent of this subsection. The subsection as reported provides that whenever the Attorney General brings an action in a State or political subdivision to enforce the 15th amendment or implementing legislation, including this statute, the district court is required to authorize the appointment of examiners (1) as part of interlocutory relief if the court determines such appointment to be necessary to enforce the 15th amendment, or (2) as part of any final judgment if the court finds that the 15th amendment has been violated in such State or subdivision. The court shall determine in which subdivision or subdivisions and for what period of time the appointment of examiners is appropriate to enforce the guarantees of the 15th amendment. The court is not required to authorize the appointment of examiners if the incidents of violations of the 15th amendment (1) have been limited in number and promptly and effectively corrected by State or local action, (2) the continuing effect of the incidents has been eliminated, and (3) there is no reasonable probability of their recurrence. This provision is in addition to the provisions of section 4 and the provisions for appointment of examiners in section 6(b).

Subsection 3(b).—The bill as introduced did not contain an equivalent of this subsection. Section 3(b) as reported by the committee provides that whenever the Attorney General brings an action in a State or a political subdivision to enforce the 15th amendment or implementing legislation, and the court finds that a test or device (as defined in subsec. 4(c)) has been used for the purpose of denying or abridging the right of any citizen to vote on account of race or color, the court is required to suspend the use of such test or device in such State or such subdivisions as the court shall determine is appropriate and for such period as it deems necessary. If the court finds that any test or device has been used with the intent to discriminate on account of race or color or, in the alternative, has had that effect, or both, it may enjoin the use of tests or devices. A test or device is enjoinable also if its application would perpetuate past discrimination. The court may, of course, exercise power granted under this subsection at the same time as it authorizes the appointment of examiners under subsection 3(a).

Subsection 3(c).—The substance of section 8 of the bill as introduced has been retained in this subsection and in section 5 of the bill as reported. This provision is intended, by providing for judicial scrutiny of new or changed voting requirements, to insure against the erection of new discriminatory voting barriers by States or political subdivisions which have already been found to have discriminated.

Subsection 3(c) as reported provides that if in a lawsuit brought by the Attorney General the court finds violations of the 15th amendment justifying equitable relief, jurisdiction shall be retained as appropriate and the court shall order that any voting qualification, prerequisite, standard, practice, or procedure different from that in force or effect when the action was brought shall be submitted to the Attorney General. If the Attorney General files an objection with the court within 60 days after such submission to him by the chief legal officer or other appropriate official of the State, the voting qualification, prerequisite, standard, practice, or procedure in dispute shall not be enforced unless and until the court finds that it does not have the purpose or will not have the effect of denying or abridging the right to vote on account of race or color. Neither the court's finding nor the Attorney General's failure to object is to constitute a bar to a subsequent action, for example, one growing out of the applications of practice or procedure which had been found unobjectionable on its face, to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure.

Section 4

Subsection 4(a).—This subsection is based upon section 3 of the bill as introduced, but major modifications have been made. This subsection assures that no citizen of the United States in any State or political subdivision for which determinations have been made pursuant to subsection 4(b) shall be denied the right to vote in any Federal, State, or local election without compliance with any test or device, as that term is defined in subsection 4(c).

This subsection prescribes the procedure by which States and political subdivisions can seek court approval of the use of tests and devices. Such relief may be sought in a declaratory judgment proceeding before a three-judge district court convened in the District of Columbia upon application of an entire State, where the subsection 4(b) determination covers the entire State, or upon application of a political subdivision with respect to which a subsection 4(b) determination has been made as a separate unit. A State or political subdivision, however, will not be permitted to resume the use of tests or devices unless and until the district court makes one of two determinations:

(1) that no test or device has been used in the plaintiff State or in the plaintiff political subdivision during the 5 years preceding the filing of the action for the purpose of denying or abridging the right to vote on account of race or color. The court may not make this determination if any test or device has been used with the intent of discriminate on account of race or color or, in the alternative, if its use has had that effect, or both (subsection 4(a)(1)) : or

(2) in the alternative that (a) either the percentage of persons in such State or political subdivision that voted in the presidential election most recent to the filing of the action exceeded the na-

⁴ The bill as introduced would have permitted a State or political subdivision to resume the use of tests or devices, upon the finding of a three-judge district court convened in the District of Columbia that neither the State nor a political subdivision or any person acting under color of law had engaged during the 10 years preceding the filing of the action in acts or practices denying or abridging the right to vote for reasons of race or color. No State or political subdivision could file such action for 10 years after the entry of a final judgment determining that denial or abridgment of the right to vote by reason of race or color had occurred in its territory.

tional average of persons voting in such election, or that the percent of persons in the plaintiff State or political subdivision that have been registered to vote by State or local officials exceeds 60 percent of persons of voting age meeting residence requirements in such State or subdivision; and that (b) the State or subdivision can prove to the satisfaction of the court that there is no denial or abridgment of the right to vote on account of race or color in such State or in any political subdivision of such State (subsec. 4(a)(2)). Subsection 4(a) further provides that where a determination is made under either subsection 4(a)(1) or 4(a)(2) the three-judge court shall retain jurisdiction of such action for 5 years after judgment and shall reopen the action upon motion of the Attorney General alleging that a test or device has been used for the purpose or with the effect of denying or abridging the right to vote on account of race.

Where a proceeding under subsection 4(a) is brought by a State, it is our intention that a declaratory judgment issued in favor of such State shall not preclude the Attorney General, where appropriate, from requiring the court to reopen the action as to the State upon allegations of discrimination within a subdivision of such State.

Subsection 4(a) further provides that in any proceeding brought pursuant to it, a final judgment of any court of the United States, rendered before or after the passage of this bill (but within 5 years of the declaratory judgment proceeding), determining that there have been denials or abridgments of the right to vote on account of race or color through the use of tests or devices anywhere within the territory of the plaintiff State or political subdivision, may be introduced as prima facie evidence of the facts found by the court. This proviso, however, is not intended to reduce the legal effect, including res judicata and estoppel, which such a final judgment has under existing law.

In any proceeding brought pursuant to this subsection, the Attorney General shall consent to the entry of a declaratory judgment if he determines that he has no reason to believe that any test or device has been used during the 5 years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, but his consent does not bar a later request for reopening based, for example, upon the application of a test or device not previously used in a discriminatory manner.

Subsection 4(b).—This subsection prescribes the conditions under which the provisions of subsection 4(a) become effective. There are two alternative formulas. Each formula requires certain factual determinations—determinations that are not reviewable in court. Two of the three determinations required under the first formula are essentially the same as those in subsection 3(a) of the bill as introduced; the other determination required by this formula is new. The second formula under this subsection also is new.

Formula No. 1

Subsection 4(b)(1).—This is the first of three determinations which must be made under the first formula before the provisions of subsection 4(a) become operative. The Attorney General must determine that a State or any political subdivision of a State maintained any test or device on November 1, 1964, as a qualification for voting.

Subsection 4(b) (2).—This subsection sets forth the two determinations which the Director of the Census must make under the first formula before the provisions of subsection 4(a) become operative:

(a) First, the Director of the Census must determine that less than 50 percent of the persons of voting age, other than aliens and persons in active military service and their dependents, residing in any State or any political subdivision of a State were registered to vote on November 1, 1964, or voted in the presidential election of 1964. The exclusion from voting age population of aliens and military persons was added by the committee. The vote in the presidential election of 1964 is the vote cast for the presidential candidates. Where an entire State falls within this subsection, so does each and every political subdivision within that State.

(b) Second, the Director of the Census must determine that, according to the 1960 census, more than 20 percent of the persons of voting age were nonwhite in any State or political subdivision of a State. Where an entire State falls within this subsection, so does each political subdivision within that State. This determination was not required in the bill as introduced.

Formula No. II

Subsection 4(b) (3).—This subsection provides an alternative formula to that set out in subsection 4(b) (1) and 4(b) (2). It provides that even if a State or subdivision is not covered by a determination made pursuant to subsections 4(b) (1) and 4(b) (2), the provisions of subsection 4(a) will go into effect when the Director of the Bureau of the Census determines, by a survey made upon the request of the Attorney General, that the total number of persons of any race or color who are registered to vote for Federal and State and local elections in any State or political subdivision is less than 25 percent of the total number of all persons of such race or color residing in such State or political subdivision. It is not contemplated that the Attorney General will request a survey except when he has reason to believe that there has been denial or abridgment of the right to vote on account of race or color. If the information is not available in the files of the Bureau, such survey as is needed will be conducted in accordance with the usual practices of the Bureau of Census.

Subsection 4(c).—Under this subsection, a test or device would be within the terms of this act and particularly section 4 if it is a prerequisite for voting or registration for voting and if it is any one of the requirements described in clauses (1) through (4). The tests or devices proscribed in the bill as reported are identical to those set out in clauses (1) through (4) of section 3(b) of the bill as introduced.

Subsection 4(c) (1).—Under this subsection, a test or device includes any requirement for a demonstration of the ability to read, pronounce, write, understand, or interpret any matter on an application form or otherwise, as a prerequisite for voting or registration for voting.

Subsection 4(c) (2).—The second type of test or device covered is any prerequisite for voting or registration for voting that requires demonstration of any educational achievement or knowledge of any particular subject, whether this demonstration is to be made by means of an application form or otherwise. This definition, for example, is intended to include a requirement that an applicant be familiar with provisions of Federal, State, or local law or demonstrate a knowledge of current events or of historical facts and would also preclude a test

of knowledge of such matters as one's exact age in years, months, and days, as well as tests of knowledge in the more usual sense.

Subsection 4(c)(3).—The third type of test or device covered is any requirement of good moral character. This definition would not result in the proscription of the frequent requirement of States and political subdivisions that an applicant for voting or registration for voting be free of conviction of a felony or mental disability. It applies where lack of good moral character is defined in terms of conviction of lesser crimes.

Subsection 4(c)(4).—The final type of test or device included within this subsection is any prerequisite for voting or registration for voting which requires a person to prove his qualifications by the voucher of registered voters or members of any other class.

Subsection 4(d).—This subsection is changed from subsection 3(c) in the bill as introduced, and clarifies the burden of proof required of a State or political subdivision to resume use of tests or devices. It provides that no State or subdivision shall be determined to have engaged in the use of tests or devices for the purpose of denying or abridging the right to vote on account of race or color if (1) incidents of the use of tests or devices for the purpose of denying or abridging the right to vote on account of race or color have been limited in number and have been promptly and effectively corrected by State or local action; (2) the continuing effect of the discriminatory use of tests or devices has been eliminated; and (3) there is no reasonable probability of the recurrence of the discriminatory use of tests or devices in the future.

Section 5

This section deals with attempts by a State or political subdivision with respect to which the prohibitions of section 4 are in effect to alter by statute or administrative acts voting qualifications and procedures in effect on November 1, 1964. The section is a substitute for section 8 of the bill as introduced.

Section 5 now permits a State or political subdivision to enforce a new or changed requirement if it, through its chief legal officer, submits the new requirement or change to the Attorney General and the Attorney General does not interpose objections within 60 days.

If the new qualification, prerequisite, standard, practice, or procedure is not submitted to the Attorney General, or if it is submitted and he interposes an objection, then the State or subdivision which is within section 4(a) will not be able to enforce the new requirements without obtaining a declaratory judgment that such new qualifications, prerequisites, standards, practice, or procedure both does not have the purpose or will not have the effect of denying or abridging rights guaranteed by the 15th amendment. Any such action for declaratory judgment must be brought before a three-judge District Court for the District of Columbia. There is a right of direct appeal to the Supreme Court.

Neither the Attorney General's failure to interpose an objection or the entry of a declaratory judgment under this section will bar any subsequent actions, for example, one growing out of the application of a practice or procedure which had been found unobjectionable on its fact, to enjoin the enactment or enforcement of a new or changed voting qualification, prerequisite, standard, practice, or procedure.

Section 6.— This section, which is substituted for section 4(a) of the bill as introduced, provides for the appointment of examiners. Examiners are to be appointed by the Civil Service Commission when the Attorney General makes any one of three certifications.

First, when a court authorizes appointment of examiners pursuant to section 3(a), the Attorney General will certify this authorization to the Commission. This provision was not included in the bill as introduced, and was added to conform with the new section 3(a).

Second, the Attorney General may certify that he has received 20 or more meritorious complaints alleging denial of the right to vote under color of law on account of race or color from residents of a political subdivision which falls within the scope of section 4(b). It is intended that the Attorney General's certification that the complaints are meritorious be final and not subject to review by the courts. This provision is substantially similar to that in the original bill, but adds a clarification that such certifications may not be made with respect to subdivisions which come within a declaratory judgment rendered pursuant to section 4(a).

Third, the Attorney General may certify that in his judgment the appointment of examiners in a subdivision within the scope of section 4(b) is necessary to enforce the guarantees of the 15th amendment. The section adds a provision to the bill as introduced, directing that in making this determination the Attorney General is to consider among other factors whether the ratio of nonwhite persons to white persons registered in the subdivision can be fairly attributed to violations of the 15th amendment. Again, the new provision makes it clear that such certification may not be made as to subdivisions which come within a declaratory judgment rendered pursuant to section 4(a). Under express language in subsection 4(b), section 6 determinations and certifications of the Attorney General are final and non-reviewable by the courts.

Section 6 also authorizes the Civil Service Commission to appoint as many examiners as it deems necessary for each subdivision with respect to which certifications have been made. To the extent practicable, the examiners are to be residents of the State in which they will serve.

The duties of examiners are set out in this section. Their functions are to examine applicants who present themselves and to prepare and maintain lists of such applicants eligible to vote in Federal, State, and local elections. Examiners are authorized to administer oaths.

The Civil Service Commission may, as required by circumstances, have one examiner serve one or more subdivisions so that it will not be necessary to have one examiner in each subdivision that may be covered.

The personnel provisions set forth in this subsection provide that examiners, hearing officers provided for in section 8, and other necessary support personnel, including observers under section 10, shall be appointed and compensated without regard to any statute administered by the Civil Service Commission, including the civil service laws, the Veterans' Preference Act of 1944, as amended, section 11 of the Administrative Procedure Act, and the Classification Act of 1949, as amended. Such persons may be excepted by the Civil Service Commission from the provisions of the Dual Compensation Act. The section also provides that all personnel appointed from outside the

Government service to these positions may be separated without regard to the Veterans' Preference Act of 1944, as amended, section 11 of the Administrative Procedure Act, and any other statute.

Personnel appointed from outside the Government service will, however, be covered by the Federal Employees' Compensation Act and subject to the Social Security Act. The provision that the Civil Service Commission is authorized to designate suitable persons in the official service of the United States, with their consent, to serve in the positions of examiner, hearing officer, and of support personnel is to enable the Civil Service Commission to use present Government employees on a detailed basis in accordance with prevailing practice. Such detailed employees will retain their full rights and benefits while serving in the positions to which they are detailed. They will not, however, by virtue of such detail, acquire additional entitlement to leave, health and life insurance, or retirement benefits, but their entitlement to such benefits will in no way be diminished.

Section 7

Subsection 7(a).—This subsection is similar to subsection 5(a) in the bill as introduced. The subsection provides that examiners, appointed pursuant to section 6 are to examine applicants at such places as the Civil Service Commission shall designate to determine their qualifications for voting. Specific authorization for the Civil Service Commission to designate places of examination was added by the committee.

This subsection requires the applicant to allege in his application that he is not otherwise registered to vote and that he has been deprived of the right to register or vote on account of race or color. A person may be "deprived of the right to register or vote on account of race or color" not only when his registration application is rejected but also when he is turned away at the polls, delayed by registrars, or when some other obstruction cognizable under the bill, deprives him of an effective opportunity to register or vote. The Attorney General may require the applicant further to allege that, within 90 days preceding his application he has been denied under color of law the opportunity to register or to vote or has been found not qualified to vote by a person acting under color of law.

Subsection 7(b).—This subsection, which was originally numbered as subsection 5(b), has been slightly changed by the committee. It now provides that the examiner is to place on a list of eligible voters any applicant whom he finds, in accordance with instructions received under subsection 8(b), to have qualifications prescribed by State law not inconsistent with the Constitution and laws of the United States. This latter provision was inserted by the committee to spell out specifically that while State law was to govern, this meant only State law which is not inconsistent with Federal law, including this act.

This subsection also provides that challenges to the examiner's listing are to be made in accordance with subsection 8(a) and are not to be the basis for a criminal prosecution under sections 11 and 12. This subsection specifies the time for transmitting and certifying the list of eligible voters to the offices of the appropriate election officials, with copies to the Attorney General and the attorney general of the State, as well as the times when the list is to be made available for public inspection.

This subsection expressly confers a right to vote to any person whose name appears on the list transmitted to appropriate election officials at least 45 days prior to an election. Such transmittal can be accomplished by depositing the list, certified to be correct by the examiner, in the U.S. registered mails on or before the 45th day. Any person whose name appears on a list must be allowed to vote unless and until his name has been removed from the list in accordance with subsection 7(d).

Subsection 7(c).—This subsection is identical, except for one minor language change, to subsection 5(c) in the bill as introduced. It provides that the examiner shall issue a certificate of voting eligibility to each person whose name appears on a list of eligible voters.

Subsection 7(d).—This subsection, which was originally numbered as subsection 5(d), has been slightly changed by the committee. In its present form, it sets forth two conditions for removal of a person from the list, of eligible voters. These conditions are, first, a successful challenge taken in accordance with the procedure enumerated in section 8, and, second, demonstration to an examiner that the person whose name is sought to be removed has lost his eligibility to vote under State law. The subsection provides that the examiner is only to consider State law not inconsistent with the Constitution and laws of the United States. The only change from the bill as introduced is the deletion of a provision which permitted persons to remain on the list if they voted at least once during 3 consecutive years while listed. It was decided that a person should be removed from the Federal list for failure to vote under the same conditions as he would be removed from the State registration rolls.

Section 8

Subsection 8(a).—This subsection provides for challenges to listings on the eligibility list and sets forth the procedure to be followed in making such challenge. It corresponds to subsection 5(a) of the bill as introduced. As reported by the committee, section 8(a) provides that a hearing officer appointed by and responsible to the Civil Service Commission shall hear challenges to listing on the eligibility list. Challenges are to be filed in an office within the State designated by the Civil Service Commission and may be entertained only if filed within 10 days after the listing of the challenged person is made available to public inspection and if supported by affidavit of at least two persons having personal knowledge of the facts constituting grounds for the challenge. There must be a certification that a copy of the challenge and affidavits have been served by mail or in person upon the person challenged.

While the bill as introduced imposed a 7-day limitation upon determining the challenge, the present bill provides for 15 days. The decision of the hearing officer on the challenge may be appealed to the court of appeals for the circuit in which the person challenged resides within 15 days after the person appealing has been served with the decision. The hearing officer's decision, however, may not be overturned unless clearly erroneous and the person listed is entitled to vote pending the final outcome of the challenge.

Subsection 8(b).—This subsection, which provides that the Civil Service Commissions shall prescribe regulations setting forth the times, places, procedures, and form for application, listing, and removals from the eligibility lists, parallels section 6(b) of the bill, as

introduced, with one exception. While the original bill provided that the Civil Service Commission after consultation with the Attorney General shall instruct examiners only concerning the qualifications required for listing, the bill as reported by the Committee provides that the instructions shall concern relevant and valid State laws with respect also to the loss of eligibility to vote.

Subsection 8(c).—This is a new subsection. It grants the Civil Service Commission the power to subpoena witnesses and documentary evidence relating to any matter pending before it, when request for a subpoena is made either by the applicant or by the challenger. Where the subpoena is not obeyed, a Federal district court within whose jurisdiction the person disobeying the subpoena is found, resides, or transacts business is given jurisdiction, upon application by the Attorney General, to issue an order requiring the person subpoenaed to appear before the Commission or a hearing officer. Failure to obey such order may be punished as a contempt of court.

Section 9

This section was added during the Committee proceedings. It provides that no State or political subdivision shall deny or deprive any person of the right to register or vote because of his failure to pay a poll tax or any other tax or payment as a precondition of registration or voting.

The bill as introduced dealt with the poll tax in subsection 5(e). That provision provided that a person could not be denied the right to vote if he tendered payment of his current poll tax to an examiner, whether or not such tender was timely under State law. The effect of this provision was to waive payment of poll taxes for the years prior to the one in which the applicant sought to make payment to an examiner. Under this provision, examiners were required to transmit poll tax payment to the appropriate State or local officials.

Section 10

This section was added by the committee.

Subsection 10(a).—This subsection provides that in any political subdivision in which an examiner is serving, the examiner may assign representatives, who may be officials of the United States, (1) to be present at any polling place for the purpose of observing whether persons entitled to vote are permitted to vote and (2) to be present at any place where votes are tabulated for the purpose of observing whether votes cast by persons entitled to vote are being properly tabulated.

Subsection 10(b).—This subsection provides that no person shall obstruct, impede, or interfere with, or attempt to obstruct, impede or interfere with, any representative of the Department of Justice assigned to perform duties under section 10.

Section 11

This section is a revised version of section 7 of the bill as introduced. Its prohibitions may be enforced in criminal or civil actions pursuant to section 12.

Subsection 11(a).—This subsection prohibits persons acting under color of law from denying or abridging the right to vote or failing to count the vote of any person who is entitled to vote under any provision of this act.

Subsection 11(b).—This subsection prohibits persons whether acting under color of law or otherwise, from intimidation, coercion, or

threatening any person from voting or attempting to vote. It also prohibits similar conduct directed at any person exercising powers or duties as examiners, hearing officers, or observers under sections 3(a), 6, 8, 10, or 12(c).

Section 12

This section is similar to section 9 of the bill as introduced.

Subsection 12(a).—This subsection is similar to subsection 9(a) of the bill as introduced. It provides criminal penalties for “willfully and knowingly” depriving or attempting to deprive other persons of rights secured by section 2, 3, 4, 5, 7, 9, or 10 or for “willfully and knowingly” violating section 11 of the act. The phrase “willfully and knowingly” was inserted by the committee in the criminal provisions of the bill to make it clear, for example, that no criminal violation is involved where a person acts inadvertently.

Subsection 12(b).—The subsection is the same as subsection 9(b) in the bill as introduced except that the word “fraudulently” was inserted to make it clear that good faith inadvertent acts would not constitute criminal violations. The subsection provides criminal penalties for destruction or alteration of paper ballots and alteration of records made by voting machines or otherwise.

Subsection 12(c).—The subsection is the same as subsection 9(c) in the bill as introduced except that the phrase “willfully and knowingly” was inserted and the scope of the subsection was broadened by reference to additional sections of the bill. The purpose of the insertion of the “willfully and knowingly” language is the same as in subsection 12(a). This subsection provides criminal sanctions for conspiracies to violate subsections 12(a) and 12(b) and for interferences with any right secured by section 2, 3, 4, 5, 7, 9, 10, or 11.

Subsection 12(d).—This subsection is the same as subsection 9(d) in the bill as introduced except that the scope of the subsection was broadened by reference to additional sections of the bill and the concluding language of the provision rephrased. The subsection provides for a civil action by the Attorney General for preventive relief whenever he has reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 2, 3, 4, 5, 7, 10, 11, or 12(b). The court may issue appropriate orders including an order directed to a State and State or local election officials requiring them (1) to permit persons listed under the act to vote and (2) to count such votes. The two examples of orders that may be directed at a State or a State or local election official are not intended to be exclusive.

Subsection 12(e).—This subsection is substituted for subsection 9(e) of the bill as introduced. It provides that, in political subdivisions for which an examiner has been appointed, if any person alleges to the examiner within 24 hours after the polls close that he has not been permitted to vote notwithstanding (1) that he has been listed under the act or registered by appropriate State officials, and (2) that he is presently eligible to vote, the examiner shall immediately notify the U.S. attorney for the judicial district, if the allegations appear to the examiner to be well founded. Upon receipt of such notification, the U.S. attorney may, within 72 hours of the closing of the polls, apply to the Federal district court for an order requiring the casting or counting of the votes of such persons and the inclusion of their votes in the total vote before the results of the election may be

deemed final and given effect. The district court is required to hold a hearing and determine the issues raised by the U.S. attorney's application immediately after it is filed. Other remedies provided by State and Federal law remain available.

Subsection 12(f).—This subsection is similar to subsection 9(f) of the bill as introduced. It provides that the Federal district courts shall have jurisdiction of proceedings instituted pursuant to section 12 of the act and that such jurisdiction shall be exercised without regard to whether a person asserting rights under the provisions of the act (which may include rights other than those appertaining to applicants for listing under the act) has exhausted any administrative or other remedies provided by law.

Section 13

This section is similar to section 10 in the original bill. It provides for the termination of listing procedures in political subdivisions both where examiners are appointed as a result of determinations made under section 4(b) and where the appointment of examiners is authorized by a court under section 3. Where the appointment of examiners is the result of a section 4(b) determination, listing procedures are terminated when the Attorney General notifies the Civil Service Commissioner (1) that all persons in the political subdivisions involved who have been listed by an examiner have been placed on the voter registration rolls by State officials and (2) that there no longer is reasonable cause to believe that persons will be deprived of or denied the right to vote on account of race or color in the subdivision involved. Any political subdivision may petition the Attorney General to terminate listings. Where appointment of examiners has been authorized by a court, pursuant to section 3(a), listing by examiners may be terminated by court order.

Section 14

Subsection 14(a).—This subsection provides that all cases of criminal contempt arising under the act shall be governed by the provisions of section 151 of the Civil Rights Act of 1957. Section 151 provides for punishment by fine or imprisonment, or both, in criminal contempt cases but limits the fine to \$1,000 and imprisonment to a term of 6 months. Criminal contempt proceedings may be with or without a jury. In a proceeding without a jury, if the sentence is a fine in excess of \$300 or imprisonment in excess of 45 days, the accused, upon demand, is entitled to a trial de novo before a jury. Section 151 is inapplicable to contempts committed in or near a court or which interfere with the administration of justice. This subsection has no effect upon usual civil contempt procedures which will continue to be tried without a jury.

Subsection 14(b).—This subsection parallels subsection 11(b) in the bill as introduced which confined to the District Court for the District of Columbia jurisdiction to issue any declaratory judgment or any restraining order or temporary or permanent injunction against the execution or enforcement or any provision of this bill or any action of a Federal officer or employee under the authority of the bill. As reported by the committee, a court of appeals acting under section 8 will have the same authority. This was added to permit a court of appeals, in exercising its reviewing function under section 8, to issue necessary declaratory or injunctive orders in connection with setting aside or

enforcing a hearing officer's finding. All challenges to the constitutionality or legality of any provision of this bill or any action taken pursuant to it must be litigated in the District Court for the District of Columbia or, when applicable, in a proceeding under section 8, in the appropriate court of appeals. This subsection also was amended to provide that the right to intervene in any action brought under the authority of this act is limited to the Attorney General and to States, political subdivisions, and other appropriate officials.

Subsection 14(c).—Clause (1) of this subsection provides for this bill a definition of the term "vote." The definition makes clear that this bill extends to all elections—Federal, State, local, primary, special or general—and to all actions connected with registration, voting and having a ballot counted. Clause (2) of this subsection is new. It defines "political subdivision" as a county or parish except that in those instances where registration is not conducted under the supervision of a county or parish, the term includes any other subdivision of a State which conducts registration for voting. This definition makes clear that the term "political subdivision" is not intended to encompass precincts, election districts, or other similar units when they are within a county or parish which supervises registration for voting.

Subsection 14(d).—This subsection replaces subsection 11(d) of the bill as introduced which made 18 U.S.C. 1001 applicable to false statements to an examiner. As amended, this subsection provides a criminal penalty for knowingly and willfully giving false information to establish eligibility to register or vote under this act or for conspiracy with another for the purpose of encouraging illegal registration or voting or for paying or offering to pay or accepting payment either for fraudulent registration or illegal voting under the provisions of this act.

Section 15

This section is identical to section 12 of the bill as introduced. It authorizes the appropriation of such sums as are necessary to carry out the terms of this bill.

Section 16

This section is identical to section 13 of the bill as introduced. It is a general separability clause, providing that the invalidity of any portion of the act shall not affect the validity of the remainder of the act and that the invalidity of its application to any person or circumstances shall not affect its applicability to other persons or circumstances.

THOMAS J. DODD.
PHILIP A. HART.
EDWARD V. LONG.
EDWARD M. KENNEDY.
BIRCH BAYH.
QUENTIN N. BURDICK.
JOSEPH D. TYDINGS.
EVERETT MCKINLEY DIRKSEN.
ROMAN L. HRUSKA.
HIRAM L. FONG.
HUGH SCOTT.
JACOB K. JAVITS.

**ADDITIONAL VIEWS OF SENATORS DODD, HART, LONG
OF MISSOURI, KENNEDY OF MASSACHUSETTS, BAYH,
BURDICK, TYDINGS, FONG, SCOTT, AND JAVITS, IN
SUPPORT OF S. 1564**

ELIMINATION OF THE POLL TAX

A significant amendment to S. 1564 adopted by a majority of the Judiciary Committee calls for the elimination of the use of a poll tax or any other tax or payment as a precondition of registering or voting.

At the present time five States require the payment of a poll tax as a condition for voting in State or local elections. The State of Arkansas has recently adopted a constitutional amendment to abolish the poll tax requirement and implementing legislation is expected to be passed in the near future. This leaves the States of Alabama, Mississippi, Texas, and Virginia as the only areas where payment must be made before the privilege of voting is allowed. In the opinion of a majority of the Judiciary Committee, the Congress not only has the authority to outlaw the poll tax in these remaining States but has the duty to do so at this time under the powers given Congress by section 5 of the 14th amendment and section 2 of the 15th amendment.

Three times in the last 8 years Congress has enacted legislation to deal with the denial of voting on the basis of racial discrimination. Had those laws been fully effective we would not now find ourselves faced with the necessity of once again having to act to insure this most basic privilege of our democratic form of government. The President, in suggesting this legislation to the Congress spoke for the Nation in calling for an end of discrimination in the voting process. The legislation that was sent to the Congress was both strong and just. This majority of the Judiciary Committee, however, in considering the legislation have concluded that it is appropriate at this moment to take the final step to remove the one remaining arbitrary and irrational barrier to the franchise. The majority of the committee was of the mind that those who exercise their talents and direct their energies to circumventing the will of Congress should be allowed no additional device or procedure to satisfy their purpose.

For this reason section 9 was added to the Voting Rights Act of 1965. We moved on the belief that the Congress of the United States has made a clear mandate under the 14th and 15th amendments to the Constitution to enforce those provisions in an appropriate manner. It was felt that if the question before us was clearly believed to be unconstitutional it would be inappropriate to so act, but where a genuine case can be made as to the constitutionality of abolishing the poll tax it was incumbent upon us not to refuse to so amend the bill merely because some have raised doubts as to future Supreme Court action.

The purpose of the poll tax in the Southern States where they have been enacted can clearly be shown to have been one of discrimination against Negroes. The Senate Judiciary Committee in 1942 so found as reported in Senate Report No. 1662. Again in 1943, in Senate Report No. 530, the Senate Judiciary Committee stated:

We think a careful examination of the so-called poll tax constitutional and statutory provisions, and an examination particularly of the constitutional conventions by which these amendments became part of the State laws, will convince any disinterested person that the object of these State constitutional conventions, from which emanated mainly the poll tax laws, were moved entirely and exclusively by a desire to exclude the Negro from voting.

The easily established fact that the poll tax was born for the purpose of disenfranchising Negroes would not be enough to have produced the current amendment. In addition we are convinced that there have been instances where the collection of such taxes has been undertaken in a blatantly discriminatory manner. In the case of Tallahatchie County, Miss., for example, it was found in a case brought by the United States that no colored residents were permitted to pay a poll tax, and affidavits were introduced showing that one applicant had been trying regularly to pay her poll taxes from 1951 to 1962, and another from 1952 to 1962. Each had been regularly turned down (*U.S. v. Dogan* 314 F.2d 767 (Fifth Circuit 1963)).

But aside from instances where the procedures for collecting poll taxes have discourge or helped to discourage citizens from participating in the political process, the majority of members of the Judiciary Committee were convinced that the effect of the poll tax is, by its very nature, discriminatory. As we believe that literacy tests are, by their very nature, discriminatory as a result of recent legal separation of the races in education, so, too, the effect of legal and de facto segregation has had the result of placing Negro citizens in a significantly different economic situation than whites.

The poll tax is a far heavier economic burden on Negroes than on whites. According to the 1960 census, for example, median family incomes for white families in Alabama were almost 2½ times greater than for nonwhite families; the median income for a white family in Mississippi is about 3 times greater than for a nonwhite family; it is 2 times greater in Texas and Virginia.

Since almost all Negroes deprived of their voting rights by those "tests or devices" that this bill is directed against, as well as by the poll tax, have not paid in previous years, the cumulative provisions of the State laws are in effect. A Negro in Mississippi, therefore, whose income reaches the nonwhite State median would have to pay over 12 percent of 1 week's income in order to vote. In Alabama and Virginia the figure is 7 percent. For one-half of the Negro citizens of these States whose income falls below the median the percentage and the economic burden is greater. For the many rural Negroes who buy on credit and transact most of their business in a bartering fashion, the funds needed for poll tax payments are almost impossible to raise in their noncash economy.

We firmly believe that these differences in income and thus the ability to pay the poll tax flow from the system of State-supported segregation and discrimination in all of these States. We firmly believe that in this time of enlightenment the franchise must not be impaired because of economic status, just as other protections of our society are not impaired because a person does not have sufficient material means. The poll tax, in essence, puts a price on the ballot, and if you can pay this price you are "qualified" to vote—if you cannot pay this sum you are somehow not a qualified citizen. This remnant from the days of property "qualifications" for voting purposes cannot stand. For the payment of a poll tax tells us nothing about a citizen's qualifications as an elector. This requirement, then, so heavily involved with various procedural devices for payment does only one thing—it is an effective barrier to voting.

The vote has been found by the Supreme Court to be a "precious" thing (*Wesberry v. Sanders* 376 U.S. 1). Those who would impede the broadening of this exercise by continuing to place a price upon the vote bear the responsibility for making their case under the Constitution of the United States, not we who would strike it down.

Beside the fact that Congress has an explicit mandate to see to it that the guarantees of the 14th and 15th amendments are enforced, Congress also has the responsibility under the Constitution to protect our "republican form of government" under section 4 of article IV. Not only does Congress have this authority, but since the landmark decision in *Luther v. Borden* (7 How. 1 (1849)), it is clear that its judgment in exercising this authority is conclusive and nonreviewable. As the Senate Judiciary Committee stated in the 1st session of the 78th Congress:

Can we have a republican form of government in any State if within that State a large portion and perhaps the majority of the citizens residing therein are denied the right to participate in governmental affairs because they are poor? * * * The most sacred right in our republican form of government is the right to vote. It is fundamental that that right should not be denied unless there are valid constitutional reasons therefor. It must be exercised freely by free men. If it is not then we do not have a republican form of government * * *.

Moreover, we do not feel that because Congress abolished the poll tax in Federal elections by a constitutional amendment it conceded that it did not have the power to do this by statute, nor do we feel it conceded that it does not have the power to abolish the poll tax in State and local elections by statute. The House of Representatives has passed five anti-poll-tax bills since 1939, but each time such bills died under Senate filibuster or the threat of a filibuster. We are convinced that the action of Congress in abolishing the poll tax by the 24th amendment for Federal elections was a compromise to avoid such problems.

Neither do we feel that the Supreme Court's decision in *Breedlove v. Suttles* (302 U.S. 277 (1937)), which upheld the now repealed Georgia poll tax, is controlling in this area. The *Breedlove* case was a suit by a white male claiming denial of equal protection under the 14th amendment because of favoritism to older people and to women.

At no time was the question of the 15th amendment raised. Furthermore, a decision on the poll tax in the absence of congressional action is not relevant to the issue of congressional power to act. Because neither racial discrimination nor congressional action was involved in *Breedlove*, it has no application to the proposed anti-poll-tax provision presently in S. 1564.

Finally, we are not moved by the arguments of some that if Congress can strike down this tax it can strike down any State tax that falls equally upon the rich and the poor. The argument cannot seriously be made that a poll tax is a revenue-producing device—the argument can be made that it is an attempt to deny a constitutional right. We are not dealing with money here, but with a basic right guaranteed by the Constitution and our action, therefore, falls much more closely to that class of taxes demand “noxious” that the Congress certainly has the right to forbid (*Grosjean v. American Press Publishing Co.*, 297 U.S. 233).

By this reasoning we have added section 9 to S. 1564. A majority of the committee had no desire to again focus the attention of this Nation upon congressional action to guarantee the rights of all citizens only to have that action fall short of its mark. At this time, and in this bill, we seek to fully implement the national desire to be free from the crippling effects of discrimination in this important area of voting. Believing the poll tax to be evil in its intent, discriminatory in its effect, and fully within the power of Congress to remove, the majority of the committee has added section 9 to this bill.

THE 60-PERCENT EXEMPTION AMENDMENT

As originally introduced, section 3(c) of the bill permitted any State or subdivision covered by the triggering provision to bring a declaratory judgment action in a three-judge district court in the District of Columbia alleging that neither the petitioner nor any person acting under color of law has engaged in discrimination in voting during the preceding 10 years. If the court so found, the suspension of tests and devices and the examiner procedure would, after judgment, be inapplicable to the petitioner. The section specifically barred a judgment for a period of 10 years after a final judgment of any court of the United States determining that discrimination in voting occurred anywhere in the territory of the petitioner.

The committee amended the comparable provision, section 4(a), of the reported bill changing somewhat the criteria for a declaratory judgment by a three-judge court in the District of Columbia. The section now authorizes such a suit based upon either of two grounds. The first is that no test or device has been used during the preceding 5 years for the purpose, or with the effect, of discrimination. The second is itself twofold: (A) the percentage of persons voting in the most recent presidential election exceeded the national average of voting participation or the percentage of persons registered to vote exceeded 60 percent of residents of voting age, and (B) there is no racial discrimination in voting in the petitioner's territory. The section as amended also provides that in any such suit a final judgment determining that discrimination in voting has occurred anywhere in the petitioner's territory shall be prima facie evidence of the facts found by the court, in addi-

tion to whatever res judicata or collateral estoppel effect such a judgment would have.

The amended provision is, in our judgment, an effective one to bar unjustified avoidance of the effect of the bill, but not as effective as the original provision. Under the provision of the bill as introduced, the States of Alabama, Mississippi, and Louisiana would have been barred automatically from bringing suit for almost 10 years because judgments have been handed down against them, or against one or more of their subdivisions, within this year. Georgia would have been barred from bringing suit for 7 years, because of a judgment against it 3 years ago. In addition, some counties in additional States, such as Fayette County, Tenn., would have been barred from suit for a time because of judgments against them within the recent past.

The amended provision does not bar suits by any State or subdivision at any time, but it makes a judgment within the preceding 5 years a *prima facie* case against the plaintiff as to the facts found in the prior suit. It therefore renders such a suit within 5 years a difficult and unrewarding exercise under section 4a(1). In such a suit the plaintiff would first have to show either no use of tests or devices to discriminate within the past 5 years, or voter participation above the national average and no discrimination in voting, whether by tests or devices or otherwise. Even if a plaintiff could satisfy this burden of proof with its own evidence, the United States may rebut that evidence simply by introducing a judgment entered within the past 5 years. Then the burden of proving its absence of discrimination would again shift to the plaintiff. Alabama, Mississippi, and Louisiana would in effect be barred from suit under section 4a(1) for 5 years and Georgia for 2 years.

The original provision reflected the view that, after the courts had already found discrimination in voting, a State or subdivision should not be permitted immediately to engage the United States in relitigating the same questions. The amended provision substantially reflects the same view. In suits brought under it, a plaintiff which uses tests or devices will have to show either that such test or devices have not caused discrimination during the preceding 5 years, or that voter participation has reached the national average and that discrimination from any cause, whether tests or devices or otherwise, has ceased. Of the States covered by the test or device trigger, only Louisiana presently has voter participation above the national average of 60 percent and would be permitted to bring suit at once. Alabama and South Carolina are near the average but still below it.

However, in such a suit, the plaintiff would still have to show in addition that no discrimination exists in voting whether by reason of tests or devices or by any other reason. The provision providing for use of *prima facie* judgment does not appear to be of much significance in this situation.

In a suit brought by a plaintiff which does not use tests or devices, but which is covered by the bill's examiner provisions under the new 25-percent trigger, the plaintiff of course cannot meet the first test, relating to nondiscrimination in tests or devices, since by definition it has no such tests or devices. To suspend the examiner provision in such a case the plaintiff will have to show that it meets the second test,

that is, voting participation above the national average and an absence of discrimination from any cause.

The original provision also reflected the view that after many decades of systematic discrimination against Negroes in voting in some States and subdivisions, it is totally unrealistic to expect that in a short period of time the suspension of tests and devices and examiner procedures provided for by the bill would automatically suffice to wipe out all discrimination in the future. The amended provision again substantially reflects the same view. To show that tests or devices are not used to discriminate under section 4(a) (1), a plaintiff will have to show that they have not operated so as to discriminate for the preceding 5 years. Similarly, in determining whether discrimination from any cause, whether tests or devices or otherwise, has ceased under section 4(a) (2) (B), the courts will take into consideration not only the immediate situation throughout the plaintiff's territory at the time of the suit, but also the situation during the years preceding the suit and the likelihood that discrimination will not recur at some point in the future.

The amended provision emphasizes this last point, regarding the future likelihood of compliance with the Constitution, by specifying that the court shall retain jurisdiction of any action brought under section 4(a) for 5 years after judgment and shall reopen the action on the motion of the Attorney General alleging a recurrence of discrimination.

While the amended provision substantially carries out the basic intent of the original provision, it does not do so in as simple and straightforward a fashion as did the original provision. And it does have the net effect of stimulating additional litigation sooner after the enactment of the bill than would have been the case under the original provision. In these respects the original provision was much to be preferred.

THE ADDITIONAL 25-PERCENT TRIGGER

A significant addition to the bill was the adoption, by the committee, of an amendment relating to the formula or "triggering" device designating areas where the appointment of Federal examiners would be authorized.

The bill as introduced on March 18, provided a "triggering" device which affected only those areas which had a literacy test, and where less than 50 percent of the voting-age population voted or was registered to vote. This formula had the disadvantage of bringing under the bill's coverage, certain counties and the entire State of Alaska—areas where discrimination because of race was not a factor in low voting participation. In an effort to correct this formula the revised bill of April 6 further defined these areas by requiring that at least 20 percent of their population be nonwhite.

During consideration of the bill in committee we determined that the formula could be further improved by adding an additional separate criterion for the appointment of Federal registrars, viz, voting participation by less than 25 percent of the Negro population. This "trigger" has two important features:

First, it is grounded firmly on the 15th amendment since it is related entirely to voter discrimination because of race or color. In every State where discrimination has occurred, it would, under the

original bill, be possible to register large numbers of whites, bringing the total registration figure over 50 percent while continuing to discriminate against the very group this bill seeks to protect. Availability of this triggering device would preclude such a maneuver.

Second, the 25-percent trigger would provide Federal relief in areas which would not have been covered under the original formula because they impose no literacy tests. Based on figures supplied by the U.S. Civil Rights Commission, the following political subdivisions in Arkansas and Florida have less than 25-percent Negro voter participation, and would be covered by the additional "trigger":

	Voting age population	Number registered	Percent registered	Percent of total voting age registered
ARKANSAS				
Crittenden.....				38.7
White.....	10,589	7,299	69.0	
Nonwhite.....	12,871	1,777	13.8	
Cross.....				81.3
White.....	7,508	4,648	61.7	
Nonwhite.....	2,040	611	29.1	
Independence.....				62.3
White.....	12,386	7,840	63.3	
Nonwhite.....	321	76	23.4	
Lee.....				40.3
White.....	4,845	2,792	57.6	
Nonwhite.....	8,987	1,434	15.9	
Polk.....				57.5
White.....	14,636	8,905	60.8	
Nonwhite.....	1,446	337	23.3	
Pope.....				67.8
White.....	12,481	8,584	69.0	
Nonwhite.....	370	90	24.3	
Washington.....				51.9
White.....	33,359	17,448	52.3	
Nonwhite.....	311	12	3.9	
FLORIDA				
Gadsden.....				39.4
White.....	11,711	8,015	68.4	
Nonwhite.....	12,261	1,425	11.6	
Jefferson.....				61.8
White.....	2,383	2,443	100+	
Nonwhite.....	2,600	638	24.5	
Lafayette.....				100+
White.....	1,538	1,835	100+	
Nonwhite.....	182	0	0	
Liberty.....				100+
White.....	1,625	2,104	100+	
Nonwhite.....	240	0	0	
Union.....				60.1
White.....	2,880	2,254	78.3	
Nonwhite.....	1,063	128	11.8	

Further, the State of Virginia, which would have been covered under the original bill because it imposes a literacy test and has voter participation of less than 50 percent, was excluded by the amendment requiring that affected areas have at least a 20-percent Negro population. Some political subdivisions of the State meet this qualification and would be covered, but others which do not meet the 50-percent figure are covered only by this additional "trigger." They are:

Virginia

	Voting-age population	Number registered	Percent registered
Counties:			
Bland:			
White.....	3,504	1,947	55.6
Nonwhite.....	146	7	4.8
Botetourt:			
White.....	9,045	4,596	50.8
Nonwhite.....	778	145	18.6
Fairfax:			
White.....	140,605	87,281	62.1
Nonwhite.....	9,110	1,904	20.9
Montgomery:			
White.....	18,091	9,010	50.1
Nonwhite.....	980	0	0
Prince William:			
White.....	24,477	9,617	39.3
Nonwhite.....	2,217	433	19.5
Rockingham:			
White.....	22,976	8,630	37.6
Nonwhite.....	427	70	16.4
Smyth:			
White.....	18,191	8,578	47.2
Nonwhite.....	327	70	21.4
Cities:			
Buena Vista:			
White.....	3,330	1,018	30.0
Nonwhite.....	156	23	14.7
Galax:			
White.....	8,078	1,500	18.6
Nonwhite.....	102	20	19.6
Winchester:			
White.....	9,200	5,135	55.8
Nonwhite.....	798	174	21.9

In addition, it is estimated that some counties in Texas and Tennessee have comparable low Negro voter participation and would also be covered. Statistics are not presently available, but, according to the testimony of A. Ross Eckler, Acting Director of the Census, they could be obtained by survey within 60 to 90 days.

A majority of the committee approved the addition of this additional trigger and it is incorporated in subsection 4(b)(3) of the bill. We support its retention.

THOMAS J. DODD.
 PHILIP A. HART.
 EDWARD V. LONG.
 EDWARD M. KENNEDY.
 BIRCH BAYH.
 QUENTIN N. BURDICK.
 JOSEPH D. TYDINGS.
 HIRAM L. FONG.
 HUGH SCOTT.
 JACOB K. JAVITS.

ADDITIONAL INDIVIDUAL VIEWS OF SENATOR
JACOB K. JAVITS

During the executive sessions of the hearings on this bill, I offered, on behalf of Senator Robert F. Kennedy and myself, an amendment to provide that education in any language in an accredited school in any State, territory, or the Commonwealth of Puerto Rico be considered equivalent to education in the English language in any such school for the purpose of determining literacy.

This amendment did not come to a vote because of the time limitation imposed upon the committee by the Senate referral.

It will be offered on the floor by both Senators from New York when the measure is considered by the Senate.

APPENDIX

APPENDIX A

	Voting age population ¹	Total vote cast, 1964, presidential election ²	Percent- age of population ³	Numbers of registered voters 1964 ⁴		Percent- age of population ⁵
				Number ⁶	Date	
Alabama ⁷	1,915,000	689,818	35.0	1,057,477	July 1964	55.0
Alaska ⁸	139,000	67,259	49.0	(⁹)		
Arizona ⁸	879,000	480,770	55.0	554,284	November 1964	63.0
Arkansas ⁸	1,124,000	560,427	49.9	633,665	January 1964	56.0
California ⁸	10,916,000	7,057,586	65.0	8,194,143	November 1964	75.0
Colorado ⁸	1,142,000	776,986	68.0	933,312	do.	81.7
Connecticut ⁸	1,698,000	1,218,678	72.0	1,373,443	do.	80.9
Delaware ⁸	283,000	201,320	71.0	245,494	October 1964	86.7
Florida ⁸	3,516,000	1,854,481	53.0	2,501,545	November 1964	71.0
Georgia ⁸	2,636,000	1,139,352	43	1,666,778	1964	63.0
Hawaii ⁸	395,000	207,271	52	239,861	November 1964	60.6
Idaho ⁸	386,000	292,477	76	364,231	do.	94.0
Illinois ⁸	6,338,000	4,702,841	74	5,634,676	do.	87.9
Indiana ⁸	2,826,000	2,091,606	74	2,628,827	October 1964	93.0
Iowa ⁸	1,638,000	1,184,539	72	(⁹)		
Kansas ⁸	1,323,000	857,901	65	1,000,000	April 1964	61.0
Kentucky ⁸	1,978,000	1,046,105	53	1,155,395	January 1965	63.0
Louisiana ⁸	1,693,000	895,293	47	822,236	Nov. 3, 1964	90.0
Maine ⁸	581,000	380,965	66	410,281	October 1964	70.6
Maryland ⁸	1,995,000	1,116,457	56	2,721,466	November 1964	82.7
Massachusetts ⁸	3,290,000	2,344,798	71	3,351,730	April 1964	72.0
Michigan ⁸	4,647,000	3,203,102	69	(⁹)		
Minnesota ⁸	2,024,000	1,654,462	77	553,500	January 1964	44.0
Mississippi ⁸	1,243,000	409,146	33	(⁹)		
Missouri ⁸	2,096,000	1,799,679	87	327,477	November 1964	82.0
Montana ⁸	399,000	278,628	70	(⁹)		
Nebraska ⁸	877,000	584,154	67	123,475	do.	67.0
Nevada ⁸	244,000	135,433	55	365,224	do.	92.0
New Hampshire ⁸	396,000	288,093	72	2,268,903	do.	78.4
New Jersey ⁸	4,147,000	2,846,770	69	464,911	do.	90.4
New Mexico ⁸	514,000	327,615	64	8,443,430	do.	74.5
New York ⁸	11,330,000	7,166,303	63	2,200,000	March 1965	76.0
North Carolina ⁸	2,753,000	1,424,983	52	(⁹)		
North Dakota ⁸	338,000	258,389	77	1,189,026	January 1965	82.0
Ohio ⁸	5,960,000	3,959,166	67	932,461	November 1964	75.0
Oklahoma ⁸	1,493,000	932,499	62	(⁹)		
Oregon ⁸	1,130,000	785,289	69	472,669	November 1964	83.0
Pennsylvania ⁸	7,060,000	4,818,668	68	772,572	September 1964	59.0
Rhode Island ⁸	668,000	390,078	59	389,782	November 1964	91.6
South Carolina ⁸	1,380,000	524,748	38	1,628,826	February 1964	72.7
South Dakota ⁸	404,000	293,118	73	3,338,718	January 1964	59.3
Tennessee ⁸	2,239,000	1,144,046	51	448,463	November 1964	85.9
Texas ⁸	5,922,000	2,628,811	44	209,225	do.	87.0
Utah ⁸	522,000	401,413	77	1,311,028	October 1964	51.6
Vermont ⁸	240,000	163,069	68	1,582,406	November 1964	96.0
Virginia ⁸	2,541,000	1,042,287	41	1,055,429	do.	102.0
Washington ⁸	1,759,000	1,258,374	72	(⁹)		
West Virginia ⁸	1,053,000	792,040	75	(⁹)		
Wisconsin ⁸	2,391,000	1,696,816	71	(⁹)		
Wyoming ⁸	196,000	142,716	73	(⁹)		
Nationwide totals	118,931,000	70,642,496	62			

¹ This is an estimate by the Bureau of Census as of Nov. 1, 1964, taken from a memorandum issued by the Department of Commerce, dated Sept. 3, 1964, No. CB64-93. It includes aliens and persons in active military service and their dependents.

² This column is based on figures supplied by official State sources to the Congressional Quarterly.

³ These percentages are based on the voting age population as of Nov. 1, 1964.

⁴ Most of these figures are based on the official reports of the various States. In some cases they do not represent the actual number of persons registered, due to the failure of registrars to purge their lists of voters who have died or moved away or otherwise become ineligible.

⁵ These States do not have statewide registration.

⁶ These States use a test or device as defined by sec. 4(c) of the proposed Voting Rights Act of 1965. Idaho, which does not have a literacy test, has a "good moral character" requirement. Some of the literacy tests States also have a "good moral character" requirement.

⁷ This does not include Fayette County, which has approximately 2,400 registered voters.

NOTE.—Subsec. 4(c) of S. 1564 as reported by the committee excludes from voting-age population aliens and persons in active military service and their dependents. If that definition is applied to this table, Alaska is the only State whose voter participation in the presidential election of 1964 would rise from below 50 percent of the voting-age population.

APPENDIX B

Test or devices as defined by sec. 4(c) of the proposed Voting Rights Act of 1985, S. 1564, and the States in which they are used

	Read	Write	Understand	Interpret any matter	Knowledge	Good moral character	Voucher
Alabama.....	X ¹	X ¹	X ²	X ²	X ²	X ¹	X ¹
Alaska.....	X ⁴	X ⁴					
Arizona.....	X ⁴	X ⁴					
California.....	X ¹	X ⁷					
Connecticut.....	X ¹					X ⁶	
Delaware.....	X ¹	X ¹					
Georgia.....	X ¹⁰	X ¹⁰	X ¹¹	X ¹⁰	X ¹⁰	X ¹¹	
Hawaii.....	X ¹⁰	X ¹⁰					
Idaho.....	X ¹¹	X ¹¹				X ¹¹	X ¹¹
Louisiana.....	X ¹⁰	X ¹⁰	X ¹⁰	X ¹⁰	X ¹¹	X ¹¹	
Maine.....	X ¹⁰	X ¹⁰					
Massachusetts.....	X ¹⁰	X ¹⁰					
Mississippi.....	X ¹⁰	X ¹⁰	X ¹⁰	X ¹⁰	X ¹⁰	X ¹⁰	
New Hampshire.....	X ¹⁰	X ¹⁰					
New York.....	X ¹⁰	X ¹⁰					
North Carolina.....	X ¹⁰	X ¹⁰					
Oregon.....	X ¹⁰	X ¹⁰					
South Carolina.....	X ¹⁰	X ¹⁰					
Virginia.....	X ¹⁰	X ¹⁰					
Washington.....	X ¹⁰		X ¹⁰				
Wyoming.....	X ¹¹						

¹ Code of Alabama, title 17, § 32.

"The following persons * * * shall be qualified to register * * * those who can read and write any article of the Constitution of the United States in the English language which may be submitted to them by the board of registrars [and] who are of good character."

² Order of Jan. 14, 1964, as amended, Aug. 26, 1964, by the Supreme Court of Alabama prescribing a new application form to be used by the board of registrars throughout the State, pt. VI (vouching), pt. III (knowledge, interpret, understand).

³ The U.S. attorney for the District of Alaska has stated that the Secretary of State believes that anyone who can speak English can vote, even if he cannot sign his name except with an "X." Hearings on S. 1564 before the House Judiciary Committee, 87th Cong., 2d sess., p. 315.

⁴ Alaska Statutes, § 15.05.010.

"A person may vote at any election who * * * (5) can speak or read English unless prevented by physical disability, or voted in the general election of November 4, 1924."

⁵ The former U.S. attorney for the District of Arizona has stated that an applicant must only attest to the fact that he is able to read the Constitution of the United States in the English language, and if there is any question about his ability, the registrar usually asks him to read other printed papers. Letter dated Mar. 8, 1962, to the Civil Rights Division from Hon. Carl Muecke. See also hearings on S. 2760, supra, p. 317.

⁶ Arizona Revised Statutes, § 16-101(A).

"Every resident of the state is qualified to become an elector and may register to vote at all elections authorized by law if he

(4) Is able to read the Constitution of the United States in the English language. * * *

(5) Is able to write his name * * *

⁷ Constitution of California, art. II, § 1:

"[N]o person who shall not be able to read the Constitution in the English language and write his or her name, shall ever exercise the privileges of an elector in this State. * * *

See also California Election Code, § 100, implementing this provision.

⁸ Constitution of Connecticut, art. VI, § 1:

"Every citizen of the United States * * * who is able to read in the English language any article of the Constitution or any section of the statutes of this state, and who sustains a good moral character, shall * * * be an elector."

See also Connecticut General Statutes, § 9-12, implementing this provision.

⁹ Constitution of Delaware, art. V, § 2:

"[N]o person * * * shall have the right to vote unless he shall be able to read this Constitution in the English language and write his name."

See also Delaware Code Annotated, title 15, § 1701, implementing this provision.

¹⁰ Georgia Code Ann., § 24-617(a):

"[The applicant] shall be required to read [the Constitution of Georgia or of the United States] aloud and write it in the English language."

¹¹ Georgia Code Ann., § 24-617(b):

"[The applicant may also] qualify on the basis of his good character and his understanding of the duties and obligations of citizenship. * * *

¹² Georgia Code Ann., § 24-618 sets forth a standard list of questions for those who seek to qualify pursuant to § 24-617(b) (e.g., "What are the names of the three branches of the United States Government?"). See also Constitution of Georgia, § 2-704 which sets forth the above requirements.

See also Georgia Code Ann., § 24-617(a).

¹³ Constitution of Hawaii, art. II, § 1:

"No person shall be qualified to vote unless he is * * * able * * * to speak, read and write the English or Hawaiian language."

¹⁴ Idaho Code, § 24-404:

"No common prostitute or person who keeps or maintains, or is interested in keeping or maintaining, or who resides in or is an inmate of, or frequents or habitually resorts to any house of prostitution or of ill fame, or any other house or place commonly used as a house of prostitution or of ill fame, or as a house or place

of resort for lewd persons for the purpose of prostitution or lewdness, or who, being male or female, do lewdly or lasciviously cohabit together, shall be permitted to register as a voter or to vote at any election in this State."

See also Constitution of Idaho, art. 5, § 6, which disqualifies from voting, inter alia, persons who are members of organizations which teach, advise, counsel, encourage or aid persons to enter into bigamy or polygamy.

¹⁰ Louisiana Rev. Stat., title 18, § 31(3):

"He shall be able to read and write. * * *

See also Louisiana Rev. Stat., title 18, § 35.

¹¹ Constitution of Louisiana, art. VIII, § 1(c):

"He shall be of good character and shall understand the duties and obligations of citizenship under a republican form of government."

See also art. VIII, §§ 1(d), 18; title 18, §§ 31(2), 36. In addition a requirement that an applicant "shall be able to understand and give a reasonable interpretation of any section of [the Louisiana or United States Constitution]," and related provisions (title 18 §§ 35, 36) was enjoined by a federal court, *United States v. Louisiana*, 225 F. Supp. 358 (1963), affirmed by the Supreme Court Mar. 8, 1965.

¹² Constitution of Louisiana, art. VIII, § 18:

"The Board [of Registrars] shall * * * issue a uniform, objective written test or examination for citizenship to determine that applicants * * * understand the duties and obligations of citizenship. * * *

See also title 18, § 191(A).

¹³ Louisiana Rev. Stat., title 18, § 31(2):

"He shall be of good moral character. * * *

¹⁴ Louisiana Rev. Stat., title 18, § 31(5):

"No registrar or deputy registrar shall register any applicant * * * unless the applicant brings with him two qualified electors of the precinct in which he resides to sign written affidavits attesting to the truth of the facts set forth in the application form. * * *

¹⁵ Constitution of Maine, art. II, § 1:

"No person shall have the right to vote * * * who shall not be able to read the Constitution in the English language, and write his name. * * *

See also title 21, § 241, implementing this provision.

¹⁶ Constitution of Massachusetts, art. XX, § 122:

"No person shall have the right to vote * * * who shall not be able to read the Constitution in the English language, and write his name."

See also Massachusetts Laws, ch. 51, § 1, implementing this provision.

¹⁷ Constitution of Mississippi, art. 12, § 241:

"Every elector shall * * * be able to read and write any section of the Constitution of this State and give a reasonable interpretation thereof to the county registrar. He shall demonstrate * * * a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government."

See also Mississippi Code, §§ 3209.6, 3213, implementing this provision.

¹⁸ Constitution of Mississippi, art. 12, § 241-A:

"In addition * * * such person shall be of good moral character."

See also Mississippi Code, §§ 3209.6, 3213, 3212.7, implementing this provision.

¹⁹ New Hampshire Rev. Stat., § 55:10:

"[An applicant shall be required] to write and to read in such manner as to show that he is not being assisted in so doing and is not reciting from memory."

See also New Hampshire Rev. Stat. §§ 55:11, 55:12, implementing this provision.

²⁰ Constitution of New York, art. 2, § 1:

"[N]o person shall become entitled to vote * * * unless such person is also able, except for physical disability, to read and write English."

See also New York Election Code, §§ 150, 168, implementing this provision.

²¹ Constitution of North Carolina, art. VI, § 4:

"Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language."

See also General Statutes of North Carolina, § 163-28, implementing this provision.

²² Oregon Rev. Stat., § 247.131:

"[N]o elector shall be registered unless he is able, except for physical disability, to read and write English."

²³ Constitution of South Carolina, art. II, § 4(d):

"Any person * * * shall be registered: *Provided*, That he can both read and write any Section of this Constitution submitted to him. * * *

As an alternative to the reading and writing test, art. II, § 4(d), provides:

"Any person * * * shall be registered: *Provided*, That he * * * has paid all taxes collectible during the previous year on property in this State assessed at three hundred dollars (\$300) or more."

See also Code of South Carolina, § 23-62, implementing these provisions.

²⁴ Code of Virginia, § 24.68:

"[The applicant must make application] in his own handwriting, without aids, suggestions, or memorandum. * * *

²⁵ Washington Revised Code, § 29.07.070(13):

"[An applicant must be] able to read and speak the English language so as to comprehend the meaning of ordinary English prose."

²⁶ Wyoming Statutes, §§ 22-118.3:

"The term 'qualified elector' includes every male and female citizen of the United States who * * * shall be able to read the constitution of Wyoming."

APPENDIX C

Voting age population and registered voters classified by race in those States where use of tests and devices is suspended by S. 1564

State	White voting age population, 1964 ¹	White registration ²	Percent	Nonwhite voting age population, 1964 ¹	Nonwhite registration ²	Percent
Alabama.....	1,415,270	² 935,695	66.2	501,730	² 92,737	18.5
Georgia.....	1,965,456	² 1,124,415	57.2	680,544	² 167,563	25.0
Louisiana.....	1,253,495	² 1,037,184	78.6	539,505	² 165,601	30.5
Mississippi.....	794,277	² 525,000	66.1	448,723	² 28,500	6.4
South Carolina.....	975,630	² 677,814	69.5	404,340	² 138,544	34.3

¹ The total voting age population for the respective States is taken from an estimate by the Bureau of Census as of Nov. 1, 1964, in a memorandum issued by the Department of Commerce, dated Sept. 8, 1964, No. CB64-63. It includes aliens and persons in active military service and their dependents. The voting age population for white and nonwhite in 1964 was computed by taking the voting age population statistics for white and nonwhite as reported in the Census of Population: 1960, determining the ratio of each group to the total voting age population in 1960, and applying that ratio to the total voting age population as estimated by the Bureau of Census for Nov. 1, 1964.

² These statistics, excepting those for Virginia, are based on findings published in U.S. Commission on Civil Rights, Registration and Voting Statistics, Mar. 19, 1965. They are not based on official State sources due to the lack of official State information classifying registrants by race.

The registration data based on official State sources in the chart containing voting and registration statistics for all States (master chart) reflect registration as of a later date than the data published by the Commission. For this reason, the registration figures in this chart, when totaled, differ slightly from the registration figures in the master chart. The totals here are as follows: Alabama, 1,028,432; Georgia, 1,292,078; Louisiana, 1,201,785; Mississippi, 553,500; South Carolina, 816,459; Virginia, 1,311,923.

³ U.S. Commission on Civil Rights, Registration and Voting Statistics, Mar. 19, 1965.

⁴ U.S. Commission on Civil Rights, Registration and Voting Statistics, Mar. 19, 1965.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

APPENDIX D

Voting and registration statistics classifying voting age population and registered voters by race in those Alabama counties in which racial voting suits have been brought under 42 U.S.C. 1971(a)

County	Percent ¹	White voting age population, ² 1960	White registration		Percent	Nonwhite voting age population, ² 1960	Non-white registration	Percent
			Number	Date				
Bullock.....	38.5	2,387	2,631	October 1964.....	110.0	4,450	1,366	31.0
Choctaw.....	31.7	5,192	3,697	February 1963.....	71.0	3,982	176	4.0
Dallas.....	22.6	14,400	9,542	August 1964.....	66.0	15,115	335	2.2
Elmore.....	43.7	12,510	12,022	November 1964.....	96.0	4,808	592	12.3
Hale.....	25.5	3,600	3,674	December 1963.....	100.0	6,000	200	3.3
Jefferson.....	37.3	256,819	134,939	October 1964.....	52.6	118,160	27,613	23.2
Macon.....	32.6	2,818	2,946	do.....	100.0	8,498	4,188	49.0
Montgomery.....	31.6	62,911	40,234	November 1964.....	64.0	33,056	7,260	22.0
Perry.....	29.6	3,441	3,280	August 1964.....	94.0	5,200	364	7.0
Sumter.....	20.8	3,061	3,297	November 1964.....	107.0	6,814	358	5.2
Wilcox.....	22.3	2,647	2,974	May 1964.....	100.0	6,085	0	0

¹ This is the percentage of those persons of voting age who voted in the presidential election of 1964.

² Census of Population: 1960, vol. 1, pt. 2, table 27, pp. 74-91. These figures include aliens and persons in active military service and their dependents.

APPENDIX E

Voting and registration statistics classifying voting age population and registered voters, by race, in those Louisiana parishes (counties) in which racial voting suits have been brought under 42 U.S.C. 1971(a)

Parish	Per- cent ¹	White voting age popu- lation, ² 1960	White registration		Per- cent	Nonwhite voting age popu- lation, ² 1960	Nonwhite registra- tion	Per- cent
			Number	Date				
Blenville.....	47.4	5,617	5,007	October 1964.....	89	4,077	584	14.0
East Carroll.....	24.3	2,990	1,939	do.....	64	4,183	179	4.3
East Feliciana.....	18.1	4,200	2,728	do.....	65	4,102	180	4.4
Jackson.....	66.4	6,807	6,082	do.....	91	2,535	1,244	49.0
Madison.....	29.1	3,834	2,467	do.....	74	5,181	294	6.0
Orachita.....	44.5	40,185	29,575	do.....	73	16,377	1,748	11.0
Plaquemines.....	40.2	8,633	7,627	do.....	88	2,897	96	3.3
Red River.....	46.9	3,294	3,539	do.....	100	2,181	90	4.3
St. Helena.....	45.5	2,863	2,059	do.....	86	2,082	560	27.0
Washington.....	51.9	16,804	15,795	do.....	94	6,821	1,634	23.9
Webster.....	43.6	15,713	12,002	do.....	77	7,046	803	11.0
West Feliciana.....	16.2	1,632	1,345	do.....	82	2,235	85	3.0

¹ This is the percentage of those persons of voting age who voted in the presidential election of 1964.

² Census of Population, 1960, vol. 1, pt. 20, table 27, pp. 74-90. These figures include aliens and persons in active military service and their dependents.

APPENDIX F

Voting and registration statistics classifying voting age population and registered voters, by race, in those Mississippi counties in which racial voting suits have been brought under 42 U.S.C. 1971(a)

County	Per- cent ¹	White voting age popula- tion, ² 1960	White registration		Per- cent	Nonwhite voting age popula- tion, ² 1960	Nonwhite registra- tion	Per- cent
			Number	Date				
Benton.....	30	2,514	2,286	September 1964.....	92.0	1,419	55	3.0
Chickasaw.....	36	6,368	4,607	August 1964.....	72.0	3,054	1	.03
Clarke.....	42	6,072	4,829	September 1964.....	80.0	2,998	84	2.2
Copiah.....	33	8,153	5,047	October 1964.....	98.8	6,407	34	.5
Forrest.....	35	22,431	13,253	June 1964.....	59.0	7,495	230	3.14
George.....	52	5,276	4,200	April 1964.....	79.0	580	14	2.4
Hinds.....	40	67,838	62,410	October 1964.....	92.0	39,183	5,616	15.5
Holmes.....	24	4,733	4,800	August 1964.....	100.0	8,757	20	.23
Issaquena.....	28	640	640	March 1965.....	100.0	1,081	12	1.1
Jasper.....	36	5,327	4,200	September 1964.....	79.0	3,675	8	.22
Jefferson Davis.....	38	3,529	3,236	December 1964.....	89.0	3,222	126	3.9
Jones.....	42	25,943	22,000	September 1963.....	85.0	7,427	700-800	10.0
Lauderdale.....	37	27,200	20,000	September 1964.....	74.0	11,924	1,700	14.3
Madison.....	22	6,622	6,236	July 1964.....	100.0	10,366	218	2.0
Marion.....	47	8,997	10,123	July 1963.....	100.0	3,630	383	11.0
Marshall.....	28	4,342	4,229	December 1964.....	97.0	7,168	177	2.5
Oktibbeha.....	31	8,423	8,000	December 1963.....	66.0	4,932	126	2.6
Panola.....	30	7,539	5,922	November 1964.....	77.0	7,230	878	12.0
Sunflower.....	20	8,785	7,062	October 1964.....	80.0	13,524	182	1.4
Tallahatchie.....	29	6,099	4,464	November 1964.....	88.0	6,481	17	.26
Walthall.....	45	4,736	4,736	November 1963.....	100.0	2,490	4	.12

¹ This is the percentage of those persons of voting age who voted in the presidential election of 1964.

² Census of Population, 1960, vol. 1, pt. 28, table 27, pp. 61-81. These figures include aliens and persons in active military service and their dependents.

³ Estimated.

APPENDIX G

Discriminatory use of "tests or devices" challenged in Justice Department litigation in Alabama

County	Court findings of racial discrimination and "pattern or practice" of discrimination		Tests and devices challenged			
	Discrimination	Pattern and practice	Read, write, understand, interpret (4(c)(1))	Knowledge (4(c)(2))	Good moral character (4(c)(3))	Voucher (4(c)(4))
Bullock (<i>U.S. v. Alabama</i>).....	X	X	X	X		X
Choctaw (<i>U.S. v. Ford</i>).....	X	X	X	X		X
Dallas (<i>U.S. v. Atkins</i>).....	X	X	X	X	X	
Elmore (<i>U.S. v. Strong</i> , 220 F. Supp. 873).....	X	X	X	X		
Hale (<i>U.S. v. Tutwiler</i>).....	(1)	(1)	X	X		
Jefferson (<i>U.S. v. Bellamy</i>).....	(2)	(2)	X	X	X	
Macon (<i>U.S. v. Alabama</i>) ¹	X	X	X	X		
Montgomery (<i>U.S. v. Parker</i> , 212 F. Supp. 163).....	X	X	X	X		
Perry (<i>U.S. v. Mayton</i>).....	X	X	X	X		(1)
Sumter (<i>U.S. v. Hines</i>).....	X	X	X	X		
Wilcox (<i>U.S. v. Wall</i>).....	(1)	(1)	X	X		X
Statewide (<i>U.S. v. Baggett</i>).....	(1)	(1)	X	X		

¹ Complaint filed Dec. 16, 1963, has not been decided.

² Complaint filed July 13, 1963, has not been decided.

³ *U.S. v. Alabama*, 192 F. Supp. 677; aff'd 304 F. 2d 583; aff'd 371 U.S. 37.

⁴ Issue in supplemental proceeding.

⁵ Judgment for defendants, case now on appeal.

⁶ Complaint filed Jan. 18, 1965, has not been decided.

APPENDIX H

Discriminatory use of "tests or devices" challenged in Justice Department litigation in Louisiana

Parish (county)	Court findings of racial discrimination and "pattern or practice" or discrimination		Tests and devices challenged			
	Discrimination	Pattern and practice	Read, write, understand, interpret (4(c)(1))	Knowledge (4(c)(2))	Good moral character (4(c)(3))	Voucher (4(c)(4))
Blenville (<i>U.S. v. Ass'n of Citizens Councils</i> , 196 F. Supp. 908)	X	X	X			
East Carroll (<i>U.S. v. Manning</i> , 205 F. Supp. 172)	X	X				X
East Feliciana (<i>U.S. v. Palmer</i>)	X (1)	X (1)	X			
Jackson (<i>U.S. v. Wilder</i> , 222 F. Supp. 749)	X	X	X	X		
Madison (<i>U.S. v. Ward</i> , 222 F. Supp. 817)	X	X		X		
Ouachita (<i>U.S. v. Lucky</i>)	X (2)	X (2)	X			X
Plaquemines (<i>U.S. v. Fox</i> , 211 F. Supp. 26)	X	X (1)	X			
Red River (<i>U.S. v. Crawford</i> , 229 F. Supp. 898)	X	X	X			
St. Helena (<i>U.S. v. Crouch</i>)	X (3)	X (3)	X			
Washington (<i>U.S. v. McElroy</i> , 180 F. Supp. 10; affirmed 362 U.S. 63 (1961))	X	X (1)	X			
Webster (<i>U.S. v. Clement</i> , 231 F. Supp. 913)	X	X	X			
West Feliciana (<i>U.S. v. Harvey</i>)	X (1)	X (1)	X			X
<i>U.S. v. Louisiana</i> (225 F. Supp. 353) (statewide) ⁴	X	X	X	X		
<i>U.S. v. Board of Registration</i> (statewide) ⁵	X (1)	X (1)	X			

¹ Complaint filed Mar. 26, 1964, has not been decided.² Decided against Government by district court, being urged on appeal.³ Case tried February 1964, has not been decided.⁴ No permanent injunction yet; pattern and practice issue to be decided on permanent injunction.⁵ Complaint filed Oct. 22, 1963, has not been decided.⁶ Case decided prior to Civil Rights Act of 1960; no pattern or practice relief available at that time.⁷ Complaint filed Oct. 25, 1963, has not been decided.⁸ In addition to the State, the defendants included the parishes of—

Blenville	La Salle	Richland
Clafborne	Lincoln	St. Helena
De Soto	Morehouse	Union
East Carroll	Ouachita	Webster
East Feliciana	Plaquemines	West Carroll
Franklin	Rapides	West Feliciana
Jackson	Red River	Winn

⁹ Complaint filed Oct. 8, 1963, has not been decided.¹⁰ In addition to the State board of registration, the defendants included the parishes of—

Caddo	Orleans	East Feliciana
Madison	Tangipahoa	

APPENDIX I

Discriminatory use of "tests of devices" challenged in Justice Department litigation in Mississippi

County	Court findings of racial discrimination and "pattern or practice" or discrimination		Tests and devices challenged			
	Discrimination	Pattern and practice	Read, write, understand, interpret (4(c)(1))	Knowledge (4(c)(2))	Good moral character (4(c)(3))	Voucher (4(c)(4))
Benton (<i>U.S. v. Mathis</i>).....	X ¹	X ¹	X	X		
Chickasaw (<i>U.S. v. Allen</i>).....	(2)	(2)	X	X		
Clarke (<i>U.S. v. Ramsey</i> , 331 F. 2d 824).....	X	X ³	X	X		
Copiah (<i>U.S. v. Weeks</i>).....	(4)	(4)	X	X		
Forrest (<i>U.S. v. Lynd</i> , 301 F. 2d 818, 321 F. 2d 20).....	X	(5)	X	X		
George (<i>U.S. v. Ward</i>).....	X	(6)	X	X	X	
Hinds (<i>U.S. v. Ashford</i>).....	(7)	(7)	X	X		
Holmes (<i>U.S. v. McClellan</i>).....	(8)	(8)	X	X		
Issaquena (<i>U.S. v. Vandevender</i>).....	(9)	(9)	X	X		
Jasper (<i>U.S. v. Hoxey</i>).....	(10)	(10)	X	X		
Jefferson Davis (<i>U.S. v. Daniel</i>).....	(11)	(11)	X	X	X	
Jones County (<i>U.S. v. Coates</i>).....	(12)	(12)	X	X		
Lauderdale (<i>U.S. v. Coleman</i>).....	(13)	(13)	X	X		
Madison (<i>U.S. v. L. F. Campbell</i>).....	(14)	(14)	X	X		
Marion (<i>U.S. v. Miskell</i>).....	X	X	X	X		
Marshall (<i>U.S. v. Clayton</i>).....	X ¹	X ¹	X	X		
Okfuskeha (<i>U.S. v. Henry</i>).....	(16)	(16)	X	X		
Patula (<i>U.S. v. Duke</i> , 332 F. 2d 759).....	X	X	X	X		
Sunflower (<i>U.S. v. C. C. Campbell</i>).....	(18)	(18)	X	X		
Tallahatchie (<i>U.S. v. Cox</i>).....	X	X	X	X		
Walthall (<i>U.S. v. Mississippi</i> , 339 F. 2d 679).....	X	X	X	X		
Statowide (<i>U.S. v. Mississippi</i> , 228 F. Supp. 923).....	(19)	(19)	X	X	X	

¹ Defendants admitted a pattern and practice of discrimination.² Complaint filed Sept. 3, 1964, has not been decided.³ The Court of Appeals for the 8th Circuit held that the trial court was clearly erroneous in finding that there had been no pattern and practice of discrimination.⁴ Complaint filed Dec. 17, 1963, has not been decided.⁵ Judgment for defendants, appeal being considered.⁶ Judgment for defendants, case on appeal.⁷ Complaint filed July 13, 1963, has not been decided.⁸ Case tried in November 1964, has not been decided.⁹ Complaint filed in January 1965, has not been decided.¹⁰ Complaint filed Sept. 3, 1964, has not been decided.¹¹ Case tried February 1965, has not been decided.¹² Complaint filed Feb. 19, 1965, has not been decided.¹³ Complaint filed Dec. 17, 1963, has not been decided.¹⁴ Case tried August 1964, has not been decided.¹⁵ Complaint filed Dec. 13, 1963, has not been decided.¹⁶ Case tried October 1964, has not been decided.¹⁷ Complaint dismissed, but Supreme Court remanded case for trial. In addition to the State, the registrars of the following counties are also defendants: Amite, Coshoma, Claiborne, Lowndes, LeFlore, and Pike.

APPENDIX J

Statutes in effect within the past 10 years requiring segregated facilities in those States which use a test or device as defined by sec. 4(c) of S. 1564

State	Travel	Recreation	Schools	Hospitals
GROUP A¹				
Alabama.....	X		X	X
Georgia.....	X	X	X	X
Louisiana.....	X	X	X	X
Mississippi.....	X	X	X	X
South Carolina.....	X	X	X	
GROUP B²				
Alaska.....				
Arizona.....				
California.....				
Connecticut.....				
Delaware.....			X	X
Hawaii.....				
Idaho.....				
Maine.....				
Massachusetts.....				
New Hampshire.....				
New York.....				
North Carolina.....	X		X	X
Oregon.....				
Virginia.....	X	X	X	X
Washington.....				
Wyoming.....				

¹ States in which tests and devices would be suspended by S. 1564 on a statewide basis.

² States in which tests and devices would not be suspended by S. 1564 on a statewide basis.

EXPLANATORY NOTES

Alabama

Travel: Ala. Code Ann. (1940), title 48 (1958 Recomp.) § 186 (declared unconstitutional in *Baldwin v. Morgan*, 287 F. 2d 750 (C.A. 5, 1961) (1964 Supp.)); §§ 196-197; §§ 301 (31a)-(31c) (declared unconstitutional in *Browder v. Gayle*, 142 F. Supp. 707 (M.D. Ala., 1956)) (1964 Supp.); § 464.

Schools: Ala. Const., art. XIV, sec. 259 (amended, amendment CXI, adopted Sept. 7, 1956); Ala. Code Ann. (1940), title 52 (1960 Recomp.) §§ 56, 53 (both repealed, Acts 1957, p. 487 § 11, amending Acts 1955, p. 495 § 10). See also *ibid.*, § 433, § 443, §§ 452-453, § 460, §§ 613(1)-613(15).

Hospitals: Ala. Code Ann. (1940), title 45 (1960 Recomp.), § 4, § 248. See also title 46 (1958 Recomp.), § 189(10).

Georgia

Travel: Code of Georgia Ann., title 18 (1936), §§ 205-210, §§ 223-224 (1963 Supp.), § 606, §§ 9901-9902, §§ 9904-9908, §§ 9918-9919 (1963 Supp.); title 69 (1957), § 513, § 616.

Recreation: Code of Georgia Ann., title 84 (1955), §§ 1603-1604.

Schools: Georgia Constitution (1945), art. VIII, § 1 (6376) (declared unconstitutional in *Holmes v. Panner*, 161 Fed. Supp. 385 (M.D. Ga., 1960)) (1963 Supp.). See also art. VII, § 2-3404 (1963 Supp.). Code of Georgia Ann., title 32 (1952) § 909, § 937 (superseded by Acts 1961, pp. 35-38) (1963 Supp.). See also title 52 (1952), § 128.

Hospitals: Code of Georgia Ann., title 35 (1962), § 225, § 308.

Louisiana

Travel: La. Rev. Stats. Ann. (1951), §§ 45: 194-196 (repealed by Acts 1958, No. 261, sec. 1); §§ 45: 522-534; §§ 45: 1301-1305.

Recreation: La. Rev. Stats. Ann. (1951), § 4: 5; §§ 4: 451-454 (1964 Supp.).

Schools: La. Const., art. XII, sec. 1 (1953) (amended Acts 1958, No. 557, adopted Nov. 4, 1958); La. Rev. Stats. (1963 Recomp.), §§ 17: 331-334 (declared unconstitutional in *Bush v. Orleans Parish School Board*, 188 F. Supp. 916 (E.D. La., 1960), affirmed 365 U.S. 609; repealed, Acts 1960, 1st Ex. Sess., No. 9, § 1); §§ 17: 341-344 (declared unconstitutional in *Bush v. Orleans Parish School Board*, supra; repealed, Acts 1960, 1st Ex. Sess., No. 3, § 1). See also §§ 17: 336-337 (repealed Acts 1960, 1st Ex. Sess., No. 8).

Hospitals: La. Rev. Stats. Ann. (1951), § 46: 181.

Mississippi

Travel: Miss. Code Ann., § 7784-7787, 7787.5 (1958 Supp.).

Recreation: Miss. Code Ann., § 4065.3 (1956 Supp.); Miss. H. B. 1958, No. 1134.

Schools: Miss. Code Ann., § 4065.3, 6220 S. 6334-01 et seq. (1956 Supp.).

Hospitals: Miss. Code Ann., §§ 6883, 6927, 6973, 6974 (1952).

South Carolina

Travel: S.C. Code Ann., title 68, §§ 714-720 (1952).

Recreation: S.C. Code Ann., title 51, § 2.4 (1962).

Schools: S.C. Code Ann., title 21, § 751 (1962).

Virginia

Travel: Va. Code Ann., § 50-325-330, 390-404 (1950), declared unconstitutional as applied to interstate travel in *Morgan v. Virginia*, 328 U.S. 373 (1946), but declared valid as applied to intrastate travel in *New v. Atlantic Greyhound*, 186 Va. 728 (1947).

Recreation: Va. Code Ann., § 18-350-357, declared unconstitutional in *Brown v. Richmond*, 204 Va. 471 (1953).

Schools: Va. Code § 22-188.3-8; § 22-188.30-31; § 22-188.41 et seq. (1958 Supp.), § 37.5-6 (1950), declared unconstitutional in *Harrison v. Day*, 200 Va. 489 (1959). See also, *James v. Almond*, 170 F. Supp. 331 (E.D. Va. 1959), later repealed by Acts 1959, Ex. Sess., ch. 74-77.

Hospitals: Va. Code, §§ 37-5 to 6 (1964 Supp.).

Delaware

Schools: Del. Code Ann., title 14, § 141, declared unconstitutional in *Evans v. Buchanan*, 258 F. 2d 688 (1958), cert. denied 358 U.S. 836.

Hospitals: Del. Code Ann., title 16, § 155, repealed by 51 Del. Laws, ch. 188 (1957).

North Carolina

Travel: N.C. Gen. Stats., § 60-94 to 98, 135-137, repealed by N.C. Sess. Laws of 1963, ch. 1165, sec. 1 (1964).

Schools: N.C. Gen. Stats., § 115-274 (1950); N.C. Gen. Stats., § 115-176 et seq. (1960).

Hospitals: N.C. Gen. Stats. § 122-8 (1957 Supp.), amended by N.C. Sess. Laws of 1963, ch. 461 (1963).

APPENDIX K

State antidiscrimination laws in force in those States which use a test or device as defined by sec. 4(c) of S. 1664

State	Educa- tion	Public accom- modations	Employ- ment	Public	Housing	
					Publicly assisted	Private
GROUP A ¹						
Alabama.....						
Georgia.....						
Louisiana.....						
Mississippi.....						
South Carolina.....						
GROUP B ²						
Alaska.....	X	X	X	X	X	X
Arizona.....		X	X	X	X	
California.....		X	X	X	X	
Connecticut.....	X	X	X	X	X	X
Delaware.....		X	X	X	X	
Hawaii.....		X	X	X	X	
Idaho.....	X	X	X			
Maine.....		X	X			
Massachusetts.....	X	X	X	X	X	
New Hampshire.....		X	X	X	X	
New York.....	X	X	X	X	X	X
North Carolina.....						
Oregon.....	X	X	X	X	X	X
Virginia.....						
Washington.....		X	X	X	X	
Wyoming.....		X				

¹ States in which tests and devices would be suspended by S. 1664 on a statewide basis.

² States in which tests and devices would not be suspended by S. 1664 on a statewide basis.

EXPLANATORY NOTES

Alaska

Public accommodations and public and private housing: Alaska Stat. Ann., secs. 11.60.230-11.60.240 (1962).

Employment: Alaska Stat. Ann., sec. 23.10.200 (1962).

Education: Alaska Stat. Ann., sec. 14.46.050 (1962).

California

Public accommodations: Cal. Civ. Code, sec. 51 (1964 Cum. Pocket Supp.).

Employment: Cal. Lab. Code, sec. 1412 (1964 Cum. Pocket Supp.).

Public and publicly assisted housing: Cal. Health and Safety Code, sec. 35700 (1964 Cum. Pocket Supp.).

Connecticut

Public accommodations and public and private housing: Conn. Gen. Stat. Rev., sec. 53-35 (1963 Cum. Pocket Supp.).

Employment: Conn. Gen. Stat. Rev., sec. 34-128 (1963 Cum. Pocket Supp.).

Education: Conn. Gen. Stat. Rev., sec. 10-15 (1959).

Delaware

Employment: Del. Code Ann., sec. 10-710 (1964 Cum. Pocket Supp.).

Public accommodations: Del. Code Ann., title 6, ch. 45 (1963).

Hawaii

Employment: Hawaii Rev. Laws, ch. 93A, sec. 1, (1963 Supp.).

Idaho

Public accommodations and employment: Idaho Sess. Laws, ch. 308 (1961).
 Education: Idaho Const., art. 9, sec. 6.

Maine

Public accommodations: Me. Rev. Stat. Ann., ch. 137, sec. 60 (1954).

Massachusetts

Public accommodations: Mass. Ann. Laws, ch. 272, secs. 92A, 93 (1956).
 Employment and housing: Mass. Ann. Laws, ch. 151 B, secs. 1-10 (1964 Cum. Pocket Supp.).
 Education: Mass. Ann. Laws, ch. 151 C, secs. 1-5 (1957).

New Hampshire

Public accommodations and public and private housing (rental): N.H. Rev. Stat. Ann., ch. 354 (1963 Supp.).

New York

Public accommodations and education: N.Y. Civ. Rights Law, sec. 40;
 Employment: N.Y. Executive Law, sec. 296.
 Housing: N.Y. Executive Law, sec. 291.

Oregon

Public accommodations: Ore. Rev. Stat., secs 30.670, 339.010 (1959).
 Employment and housing: Ore. Rev. Stat., sec. 639.010 (1959).
 Education: Ore. Rev. Stat., sec. 345.240 (1959), prescribes discrimination in "vocational, professional or trade schools."

Washington

Public accommodations: Wash. Rev. Code Ann., secs. 49.60.030, 49.60.215 (1963).
 Employment: Wash. Rev. Code Ann., sec. 49.60.030, 49.60.180, 49.60.190, 49.60.200, 49.60.210 (1963).
 Housing: Wash. Rev. Code Ann., secs. 49.60.030, 49.60.217 (1963).

Wyoming

Public accommodations: Wyo. Stat. Ann., sec. 6-63.1 (1963 Cum. Supp.).

APPENDIX L

EFFECT OF S. 1564 ON STATES WHICH USE A TEST OR DEVISE

GROUP A.—States in which the use of a test or device would be suspended

State	Voting age population, 1964 ¹	Aliens, 1964 ²	Persons in active military service, 1964 ³	Dependents of persons in active military service, 1964 ⁴	Revised voting age population, 1964 ⁵	Vote cast, 1964 presidential election ⁶	Percentage of revised voting age population voting in the 1964 presidential election ⁷	Registration	Percentage of revised voting age population registered	Nonwhite voting age population, (1960) ⁸	Nonwhite percentage of voting age population (col. 1)
Alabama.....	1,915,000	5,271	17,000	8,500	1,884,229	680,818	38.6	^a 1,057,477	56.1	481,320	26.2
Georgia.....	2,636,000	11,661	96,000	48,000	2,480,339	1,139,352	45.9	^a 1,666,778	67.2	612,910	25.4
Louisiana.....	1,893,000	17,685	25,000	12,500	1,837,815	896,263	48.8	^a 1,198,395	65.0	514,589	28.5
Mississippi.....	1,243,000	3,641	17,000	8,500	1,213,859	469,146	33.7	^a 553,500	43.6	422,256	36.1
South Carolina.....	1,380,000	4,754	47,000	23,500	1,304,746	524,748	40.2	^a 772,572	59.2	371,104	29.3

¹ This is an estimate of the total resident voting age population by the Bureau of Census as of Nov. 1, 1964, taken from a memorandum issued by the Department of Commerce, dated Sept. 8, 1964, No. CB64-93.

² This is taken from table 36A of the 1964 Annual Report of the Immigration and Naturalization Service.

³ This is based on unpublished data supplied by the Bureau of Census.

⁴ This is based on information supplied by the Bureau of the Census indicating that approximately 50 percent of the persons in active military service are married.

⁵ This is the total voting age population, excluding aliens and persons in active military service and their dependents.

⁶ This is based on official reports.

⁷ The percentages beginning with Arizona and ending with Wyoming are based on total voting age population.

⁸ Taken from table 16 of the 1960 Census of Population, vol. 1, for the respective States. Aliens and persons in active military service and their dependents have not been excluded from the figures in this column.

^a This is based on data reported by the U.S. Commission on Civil Rights.

GROUP B.—States in which the use of a test or device would not be suspended only because less than 20 percent of population is nonwhite

State	Voting age population, 1964 ¹	Aliens, 1964 ²	Persons in active military service, 1964 ³	Dependents of persons in active military service, 1964 ⁴	Revised voting age population, 1964 ⁵	Vote cast, 1964 presidential election ⁶	Percentage of revised voting age population voting in the 1964 presidential election	Registration	Percentage of revised voting age population registered	Nonwhite voting age population, 1960 ⁷	Nonwhite percentage of voting age population (col. 1)
Virginia.....	2,541,000	19,149	113,000	58,500	2,352,351	1,042,267	44.3	^a 1,311,023	55.7	436,720	18.9

¹ This is an estimate of the total resident voting age population by the Bureau of Census as of Nov. 1, 1964, taken from a memorandum issued by the Department of Commerce dated Sept. 3, 1964, No. CB64-43.

² This is taken from table 38A of the 1964 Annual Report of the Immigration and Naturalization Service.

³ This is based on unpublished data supplied by the Bureau of Census.

⁴ This is based on information supplied by the Bureau of the Census indicating that approximately 50 percent of the persons in active military service are married.

⁵ This is the total voting age population, excluding aliens and persons in active military service and their dependents.

⁶ This is based on official reports.

⁷ Taken from table 16 of the 1960 Census of Population, vol. 1, for the respective States. Aliens and persons in active military service and their dependents have not been excluded from the figures in this column.

GROUP C.—States in which the use of a test or device would not be suspended because more than 50 percent voted

State	Voting age population, 1964 ¹	Aliens, 1964 ²	Persons in active military service, 1964 ³	Dependents of persons in active military service, 1964 ⁴	Revised voting age population, 1964 ⁵	Vote cast, 1964 presidential election ⁶	Percentage of revised voting age population voting in the 1964 presidential election ⁷	Registration	Percentage of revised voting age population registered	Nonwhite voting age population, (1960) ⁸	Nonwhite percentage of voting age population (col. 1)
Alaska.....	138,000	2,776	30,000	15,000	90,224	67,259	74.8	(9)	(9)		
Arizona.....	879,000					490,770	55.0	484,264	66.0		
California.....	10,916,000					7,057,596	65.0	8,184,143	75.0		
Connecticut.....	1,698,000					1,218,578	72.0	1,373,443	80.9		
Delaware.....	283,000					201,320	71.0	245,494	86.7		
Hawaii.....	395,000					207,271	52.0	239,361	60.6		
Idaho.....	386,000					292,477	76.0	334,231	94.0		
Maine.....	581,000					380,965	65.0	522,238	90.0		
Massachusetts.....	3,290,000					2,344,798	71.0	2,721,466	82.7		
New Hampshire.....	396,000					258,093	72.0	365,224	92.0		
New York.....	11,330,000					7,166,203	63.0	8,443,430	74.5		
North Carolina.....	2,753,000					1,424,983	52.0	2,200,000	76.0		
Oregon.....	1,130,000					786,289	69.0	932,451	75.0		
Washington.....	1,759,000					1,258,574	72.0	1,582,046	90.0		
Wyoming.....	195,000					142,718	73.0	(9)	(9)		

¹ This is an estimate of the total resident voting age population by the Bureau of the Census as of Nov. 1, 1964, taken from a memorandum issued by the Department of Commerce dated Sept. 8, 1964, No. CB64-93.

² This is taken from table 36A of the 1964 Annual Report of the Immigration and Naturalization Service.

³ This is based on unpublished data supplied by the Bureau of the Census.

⁴ This is based on information supplied by the Bureau of the Census indicating that approximately 50 percent of the persons in active military service are married.

⁵ This is the total voting age population, excluding aliens and persons in active military service and their dependents.

⁶ This is based on official reports.

⁷ The percentages beginning with Arizona and ending with Wyoming are based on total voting age population.

⁸ Taken from table 16 of the 1960 Census of Population, vol. 1, for the respective States. Aliens and persons in active military service and their dependents have not been excluded from the figures in this column.

⁹ No registration.

EFFECT OF S. 1564 ON POLITICAL SUBDIVISIONS WHICH USE A TEST OR DEVICE
GROUP A.—Political subdivisions in which the use of a test or device would be suspended as a separate unit

State and county	Voting age population, 1960 ¹	Persons in active military service, 1960 ²	Dependents of persons in active military service, 1960 ³	Revised voting age population, 1960 ⁴	Vote cast, 1964 presidential election ⁵	Percentage of revised voting age population voting in the 1964 presidential election	Nonwhite voting age population, 1960 ¹	Nonwhite percentage of voting age population
Arizona:								
Apache County.....	13,045	0	0	13,045	3,892	29.8	9,259	71.7
North Carolina:								
Anson.....	13,035	4	2	13,059	5,865	44.9	5,218	39.9
Beaufort.....	19,833	55	28	19,850	9,685	48.8	8,196	30.9
Bertie.....	12,417	0	0	12,417	4,263	34.3	6,261	50.4
Bladen.....	14,320	14	7	14,299	6,685	46.8	5,147	35.9
Camden.....	8,042	13	7	8,022	1,404	16.5	1,054	13.0
Caswell.....	10,155	0	0	10,155	4,306	42.2	4,129	40.7
Chowan.....	6,332	4	2	6,326	2,493	39.3	2,507	39.6
Edgecombe.....	27,845	9	5	27,831	11,766	42.3	12,330	44.3
Franklin.....	15,396	9	5	15,382	6,651	43.2	5,554	36.1
Gates.....	5,058	3	2	5,053	2,258	44.7	2,344	46.3
Grauwille.....	18,580	13	7	18,580	7,220	38.9	8,996	37.7
Greene.....	8,061	4	2	8,055	3,613	44.9	3,268	40.5
Hallfax.....	30,262	121	61	30,080	13,708	45.6	13,766	45.5
Hertford.....	11,708	0	0	11,708	4,947	42.3	6,102	52.1
Hoke.....	7,745	47	24	7,674	3,053	39.5	3,747	48.4
Lenoir.....	29,553	66	33	29,454	13,234	44.9	10,293	34.6
Martin.....	12,735	4	2	12,729	6,332	46.1	5,683	41.4
Nash.....	32,384	9	5	32,320	15,559	48.1	10,573	32.7
Northampton.....	15,482	9	5	15,468	6,233	40.3	7,204	46.2
Pasquotank.....	14,345	597	300	13,448	6,649	49.4	4,636	34.4
Perquimans.....	5,110	19	10	5,081	2,399	47.2	2,027	39.7
Person.....	14,221	4	2	14,215	6,902	48.5	4,227	29.7
Pitt.....	36,196	26	13	36,157	16,466	45.5	13,575	37.5
Robeson.....	42,275	47	24	42,204	17,357	41.2	21,424	50.7
Scotland.....	12,498	13	7	12,478	5,073	40.7	4,688	37.5
Vance.....	17,525	0	0	17,525	8,638	49.3	6,620	37.2
Warren.....	9,929	0	0	9,929	4,758	47.9	5,490	55.3
Wayne.....	45,103	4,593	2,360	38,215	17,846	45.4	15,754	34.9
Wilson.....	31,336	17	9	31,310	12,240	39.2	10,770	34.4

See footnotes at end of table, p. 57.

GROUP A.—Political subdivisions in which the use of a test or device would be suspended as a separate unit—Continued

State and county	Voting age population, 1960 ¹	Persons in active military service, 1960 ²	Dependents of persons in active military service, 1960 ³	Revised voting age population, 1960 ⁴	Vote cast, 1964 presidential election ⁵	Percentage of revised voting age population voting in the 1964 presidential election	Nonwhite voting age population, 1960 ¹	Nonwhite percentage of voting age population
Virginia:								
Accomack.....	19,290	81	41	19,168	6,983	34.9	6,142	31.8
Amherst.....	13,216	8	4	13,204	5,410	41.0	2,668	20.4
Brunswick.....	9,371	0	0	9,371	4,446	47.4	4,734	50.5
Fluckingham.....	5,984	0	0	5,984	2,733	45.7	2,208	36.9
Caroline.....	7,003	95	48	6,860	3,243	47.3	3,210	45.8
Charles City.....	2,708	0	0	2,708	1,346	49.8	2,126	78.5
Charlotte.....	7,514	0	0	7,514	3,178	42.3	2,500	33.3
Culpeper.....	9,032	4	2	9,026	3,665	40.6	2,038	22.9
Dinwiddie.....	13,799	50	25	13,724	4,285	31.2	8,567	62.2
Essex.....	3,908	11	6	3,889	1,550	39.9	1,665	42.6
Fauquier.....	13,519	507	254	13,058	6,513	42.2	3,093	22.4
Fluvanna.....	4,168	7	4	4,157	1,334	44.1	1,378	33.1
Gloucester.....	7,223	16	8	7,199	3,563	49.8	1,982	26.1
Goochland.....	5,433	5	3	5,425	2,697	49.7	2,312	42.6
Halifax.....	18,146	3	2	18,141	6,144	33.9	6,789	37.8
Hanover.....	15,734	9	5	15,720	7,751	49.3	3,302	21.0
Isle of Wight.....	9,303	107	54	9,147	4,399	48.1	4,317	46.4
James City.....	6,901	221	111	6,599	2,539	43.2	2,056	29.8
King George.....	4,209	162	81	3,966	1,489	37.5	1,009	24.0
King William.....	4,355	4	2	4,349	1,975	45.4	1,394	42.8
Louisa.....	7,399	12	6	7,381	3,103	42.0	2,482	33.5
Lunenburg.....	7,145	0	0	7,145	2,977	41.7	2,534	35.5
Mathews.....	4,871	16	8	4,847	2,286	47.2	1,062	21.8
Mecklenburg.....	17,098	0	0	17,098	8,227	48.1	6,624	38.7
Nansemond.....	16,771	68	34	16,669	7,415	44.2	9,806	58.5
Nelson.....	7,506	0	0	7,506	2,534	33.8	1,913	24.2
Northampton.....	10,126	203	102	9,821	3,103	31.6	4,756	47.3
Northumberland.....	6,088	0	0	6,088	2,418	39.7	2,123	34.9
Pittsylvania.....	31,439	8	4	31,427	12,373	39.4	5,604	27.4
Richmond.....	3,845	0	0	3,845	1,540	40.1	1,132	29.4
Southampton ⁶	4 10,388	0	0	10,388	4,090	39.4	5,267	50.7
Sussex.....	6,368	0	0	6,368	2,775	43.6	3,706	58.2
Westmoreland.....	6,188	0	0	6,188	2,499	40.4	2,352	38.0

Independent city:									
Chesapeake ¹	39,878	1,142	571	38,165	18,621	48.8	9,428	23.6	
Danville.....	28,792	8	4	28,780	12,724	44.2	6,388	22.2	
Franklin ²	14,286	0	0	4,286	2,041	47.6	2,173	50.7	
Martinsville.....	11,056	0	0	11,056	4,824	43.6	2,972	26.9	
Newport News.....	65,232	8,946	4,423	51,963	25,894	49.9	20,974	32.2	
Norfolk.....	174,799	45,196	22,598	107,005	51,546	48.2	45,376	26.0	
Petersburg.....	22,349	602	301	21,446	7,775	36.3	9,821	43.9	
Portsmouth.....	65,341	10,562	5,281	49,498	24,544	49.6	21,055	32.2	
Richmond.....	144,227	264	102	143,921	62,890	43.7	53,719	37.2	
Suffolk.....	8,041	18	9	8,014	3,044	37.9	2,769	34.4	

¹ Census of Population, 1960, vol. 1, table 27, for the respective States.

² Based on unpublished data supplied by the Bureau of the Census.

³ Based on information supplied by the Bureau of the Census indicating that approximately 50 percent of the persons in active military service are married.

⁴ Total voting age population not including persons in active military service and their dependents. Figures showing the alien population on other than a statewide basis are not available at the present time.

⁵ Based on official State sources.

⁶ The city of Franklin, which is located within the county of Southampton, became an independent city subsequent to 1960. To properly reflect the number of persons of voting age residing in the county of Southampton with the total vote cast in that county in the presidential election of 1964, the number of persons of voting age residing in the city of Franklin has been subtracted from the number of persons of voting age residing in the county of Southampton. (See footnote 9, infra.)

⁷ The number of white and nonwhite persons of voting age was determined by ascertaining the ratios of white persons of voting age and nonwhite persons of voting age to the total number of persons of voting age as reported in the Census of Population, 1960. These ratios were then applied to the number of persons of voting age residing in the county of Southampton after deducting the number of persons of voting age residing in the city of Franklin.

⁸ The independent city of South Norfolk and the county of Norfolk were consolidated Jan. 1, 1963 and renamed Chesapeake.

⁹ See footnote 8, supra.

¹⁰ The city of Franklin became an independent city subsequent to 1960. The Bureau of the Census in its 1963 publication did not report the number of persons 21 and over residing in the city of Franklin. The Census of Population, 1960, vol. 1, pt. 48, table 22, at p. 55, however, does indicate that 4,235 persons 20 years and over reside in the city of Franklin. To ascertain which of these persons are of voting age (21 and over), the following computation was made: 1st, because Franklin was included as part of Southampton County, it was determined that 99.78 percent of those persons 20 and over (14,706) residing in Southampton County are 21 and over (14,674), and this ratio (99.78 percent) was then applied to the number of persons 20 and over residing in the city of Franklin (4,235).

¹¹ The number of white and nonwhite persons of voting age was determined by ascertaining the ratios of white persons of voting age and nonwhite persons of voting age to the total number of persons of voting age residing in the county of Southampton as reported in the Census of Population, 1960. These ratios were then applied to the number of persons of voting age residing in the city of Franklin.

GROUP B.—Political subdivisions in which the use of a test or device would not be suspended because less than 20 percent of population is nonwhite and/or more than 50 percent of the population voted

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State, election district, county, or independent city	Voting age population, 1960 ¹	Persons in active military service, 1960 ²	Dependents of persons in active military service, 1960 ²	Revised voting age population, 1960 ³	Vote cast, 1964 presidential election ⁴	Percentage of revised voting age population voting in the 1964 presidential election	Nonwhite voting age population, 1960 ¹	Nonwhite percentage of voting age population
Alaska:								
No. 8, Anchorage	50,063				22,588	45.1	3,863	7.7
No. 11, Kodiak	1,379				1,582	26.1	658	15.3
No. 16, Fairbanks	27,615				10,750	28.9	3,001	10.9
No. 12, Aleutian Islands	4,061	2,426		1,635	855	51.7	1,229	29.9
No. 17, Barrow-Nobuk	2,948	244		2,604	1,401	53.8	2,132	75.6
Idaho: Elmore County	8,909	3,300	1,650	3,959	4,167	100.0	262	2.9
Maine: Arundook	55,787	8,415	3,408	44,564	27,846	60.5	1,071	1.9
North Carolina:								
Craven	31,236	5,805	2,403	21,028	12,112	57.6	8,242	26.4
Cumberland	77,068	31,961	12,660	30,267	22,957	76.0	18,789	24.4
Hyde	3,301	31	10	3,254	1,641	50.4	1,100	33.3
Onslow	39,003	28,310	0	10,693	9,726	91.0	5,015	12.9
Union	24,467	4	2	24,461	11,437	46.8	4,423	18.1
Virginia:								
Albemarle	18,245				6,315	34.6	2,576	14.1
Alleghany	6,981				2,685	38.7	256	2.7
Augusta	22,178				8,372	37.7	864	3.9
Bath	3,310				1,288	38.8	340	10.3
Bedford	18,207				7,914	43.2	3,044	16.8
Bland	3,666				1,570	42.0	146	4.0
Botetourt	9,223				4,476	48.6	778	7.9
Buchanan	16,790				7,124	42.4	8	.04
Campbell	18,809				9,145	48.6	3,291	17.5
Carroll	13,655				6,146	45.0	41	.3
Clarke	4,802				2,206	45.9	786	16.4
Floyd	6,325				2,965	47.2	308	4.9
Franklin	14,629				6,737	39.5	1,726	11.9
Frederick	12,711				5,474	43.1	232	1.8
Greene	2,659				1,104	41.5	328	12.3
Henry	21,513				8,184	37.3	4,112	18.3
Highland	2,056				985	48.1	16	.3
Loudoun	14,253				6,877	48.2	2,229	15.7
Madison	4,781				1,922	40.2	856	18.8
Montgomery	19,051				8,489	44.6	950	5.0
Orange	7,698				3,107	40.4	1,421	18.6
Patrick	8,692				3,776	43.4	611	7.1

Prince William.....	28,604				8,963	33.6	2,217	8.3
Pulaski.....	15,522				6,722	42.5	1,080	6.8
Rappahannock.....	3,148				1,127	35.8	540	17.2
Rockingham.....	23,403				6,363	27.2	427	1.9
Rockbridge.....	13,789				4,866	34.9	1,127	8.2
Smyth.....	18,518				7,862	42.9	327	1.8
Spotsylvania.....	7,785				3,367	43.4	1,303	19.4
Stafford.....	9,565				4,364	45.6	971	10.2
Tazewell.....	24,309				9,417	38.7	1,071	4.4
Warren.....	8,788				4,390	49.9	587	6.7
Washington.....	21,692				9,226	42.5	846	2.5
Wise.....	23,287				10,539	45.3	685	2.9
Wythe.....	12,522				5,863	45.7	523	4.1
Independent city:								
Alexandria.....	56,573				25,683	45.4	6,025	10.6
Bristol.....	10,045				3,723	37.1	672	6.7
Buena Vista.....	3,546				1,153	32.5	156	4.4
Covington.....	6,957				3,206	46.1	751	10.8
Fredericksburg.....	8,188				3,919	47.9	1,471	18.0
Galax.....	3,225				1,416	43.9	162	4.7
Harrisonburg.....	7,183				3,590	49.9	436	6.1
Lynchburg.....	34,302				16,834	49.1	6,574	19.2
Norton.....	2,952				1,196	40.5	188	6.4
Roanoke.....	62,046				28,496	45.9	9,519	15.3
Staunton.....	14,579				6,680	39.0	1,228	8.4
Waynesboro.....	9,215				4,531	49.2	545	5.9
Winchester.....	9,908				4,437	44.8	708	7.1
Nottoway.....	9,022	112	56	8,854	4,499	50.8	3,458	38.3
Prince George.....	11,280	5,451	2,725	3,104	3,295	100.0	2,420	21.5
Independent city: Hampton.....	51,620	6,624	3,312	41,684	22,288	53.5	10,825	21.0

¹ Census of Population: 1960, vol. 1, table 27 for the respective States.

² Based on unpublished data supplied by the Bureau of Census.

³ Based on information supplied by the Bureau of Census indicating that approximately 50 percent of the persons in active military service are married. However in Alaska this calculation was not necessary to bring the percentage of the revised voting age population over 50 percent.

⁴ Total voting age population not including persons in active military service and their

dependents. Figures showing the alien population on other than a statewide basis are not available at the present time.

⁵ Based on official State sources.

⁶ These percentages are based on total voting age population.

⁷ In 1962 Alaska redefined its election districts merging Barrow with Kobuk.

⁸ These percentages beginning with the county of Albemarle and ending with the independent city of Winchester are based on total voting age population.

GROUP C.—Political subdivisions in which the use of a test or device would not be suspended because more than 50 percent voted

ALASKA¹

Number and names of election district	Voting age population ²	Vote cast, 1964 presidential election ³	Percentage of population
1. Prince of Wales-Ketchikan.....	7,018	4,605	65.5
2. Wrangell-Petersburg.....	2,341	1,842	78.7
3. Sitka.....	3,870	2,396	61.9
4. Juneau.....	5,857	5,307	90.6
5. Lynn Canal-Icy Straits.....	1,868	1,306	70.0
6. Cordova-McCarthy Valdez-Chitina-Whittier.....	2,873	1,485	51.7
7. Palmer-Wasilla-Talkeetna.....	3,037	2,205	72.6
8. Seward.....	1,789	938	52.4
9. Kenai-Cook Inlet.....	3,271	2,627	80.3
10. Bristol Bay.....	2,175	1,198	55.1
11. Bethel.....	2,635	1,715	64.7
12. Kuskokwim Yukon-Koyukuk.....	3,790	1,966	51.8
13. Nome.....	3,084	1,791	58.1
14. Wade Hampton.....	1,387	712	51.3

¹ In 1962 Alaska redefined its election districts. Prince of Wales merged with Ketchikan; Cordova-McCarthy merged with Valdez-Chitina-Whittier; Kuskokwim merged with Yukon-Koyukuk; Fairbanks merged with Upper Yukon; and Barrow merged with Kobuk.

² Census of Population, 1960, vol. 1, pt. 3, table 27, pp. 31-33.

³ Report of the secretary of state for the State of Alaska on file at the Governmental Affairs Institute, Washington, D.C.

⁴ As a result of the redefinition of Alaska's election districts, see footnote 1, *supra*, 187 persons of voting age who were listed in the 1960 census as residents of Kenai-Cook Inlet, now reside within the boundaries of Palmer-Wasilla-Talkeetna.

ARIZONA

County	Voting age population ¹	Vote cast, 1964 presidential election ²	Percentage of population
Cochise.....	30,918	16,097	54.0
Cocconino.....	21,108	11,037	52.3
Gila.....	14,164	10,537	74.4
Graham.....	7,126	5,438	76.3
Greenlee.....	5,951	4,270	71.9
Maricopa.....	380,037	205,328	53.8
Mohave.....	4,892	4,353	89.2
Navajo.....	17,047	9,049	53.1
Pima.....	153,730	102,144	66.4
Pinal.....	28,284	15,572	55.1
Santa Cruz.....	8,073	3,460	42.9
Yavapai.....	18,210	13,580	74.6
Yuma.....	26,286	14,410	54.8

¹ Census of Population, 1960, vol. 1, pt. 4, table 27, pp. 38-41.

² Report of the secretary of state for the State of Arizona on file at the Governmental Affairs Institute, Washington, D.C.

(GROUP C.—Political subdivisions in which the use of a test or device would not be suspended because more than 50 percent voted—Continued)

CALIFORNIA

County	Voting age population ¹	Vote cast, 1964 presidential election ²	Percentage of population
Alameda.....	600,188	427,340	71.1
Alpine.....	228	220	96.5
Amador.....	6,891	8,100	86.8
Butte.....	51,235	40,419	78.9
Calaveras.....	6,714	5,397	80.4
Colusa.....	7,804	4,606	63.1
Contra Costa.....	232,243	178,245	76.7
Del Norte.....	9,972	5,727	57.4
El Dorado.....	18,330	14,610	79.7
Fresno.....	208,646	158,308	75.9
Glenn.....	10,899	7,290	70.1
Humboldt.....	60,036	38,499	64.1
Imperial.....	41,216	21,492	52.1
Inyo.....	7,402	5,919	80.0
Kern.....	103,063	109,608	66.8
Kings.....	27,877	18,848	68.1
Lake.....	9,622	6,302	66.3
Lassen.....	8,206	6,201	75.6
Los Angeles.....	3,530,926	2,730,898	71.3
Madera.....	22,729	13,892	61.0
Marin.....	91,674	75,364	82.3
Mariposa.....	3,512	2,068	58.9
Mendocino.....	30,952	18,227	58.9
Merced.....	60,282	28,299	46.2
Modoc.....	4,998	3,358	67.2
Mono.....	1,498	1,518	101.2
Monterey.....	116,686	64,672	55.4
Napa.....	43,244	31,210	72.2
Nevada.....	13,741	11,318	82.4
Orange.....	400,040	401,187	100.3
Placer.....	58,198	27,676	47.5
Plumas.....	7,149	5,713	79.9
Riverside.....	185,468	144,788	78.1
Sacramento.....	297,301	227,871	76.6
San Benito.....	9,078	6,237	68.7
San Bernardino.....	297,092	215,400	72.5
San Diego.....	601,616	420,280	70.0
San Francisco.....	531,774	323,906	60.9
San Joaquin.....	182,042	95,839	52.6
San Luis Obispo.....	60,831	37,186	61.1
San Mateo.....	270,865	219,191	80.9
Santa Barbara.....	103,064	86,401	83.8
Santa Clara.....	371,064	320,527	86.4
Santa Cruz.....	56,635	45,644	80.6
Shasta.....	34,846	28,360	81.4
Sierra.....	1,437	1,241	86.3
Siskiyou.....	20,431	14,335	70.2
Solano.....	79,132	50,245	63.5
Sonoma.....	91,136	72,136	79.2
Stanislaus.....	94,311	65,128	69.1
Sutter.....	19,391	14,044	72.4
Tehama.....	16,103	11,467	71.2
Triunty.....	5,818	3,439	59.1
Tulare.....	95,840	56,552	59.0
Tuolumne.....	9,464	7,820	82.6
Ventura.....	116,970	96,238	82.2
Yolo.....	33,596	26,274	78.2
Yuba.....	19,374	11,789	60.9

¹ Census of Population, 1960, vol. 1, pt. 6, table 27, pp. 179-194.

² Report of the secretary of state for the State of California on file at the Government Affairs Institute, Washington, D.C.

GROUP C.—Political subdivisions in which the use of a test or device would not be suspended because more than 50 percent voted—Continued

CONNECTICUT

County	Voting age population ¹	Vote cast, 1964 presidential election ²	Percentage of population
Fairfield.....	414,664	320,358	77.3
Hartford.....	433,144	329,882	75.9
Litchfield.....	75,173	61,006	81.2
Middlesex.....	56,229	45,134	80.3
New Haven.....	417,135	316,399	75.9
New London.....	112,641	75,942	67.4
Tolland.....	39,592	32,146	81.2
Windham.....	42,888	34,316	80.0

¹ Census of Population, 1960, vol. 1, pt. 8, table 27, pp. 63-66.

² Report of the secretary of state for the State of Connecticut on file at the Government Affairs Institute, Washington, D.C.

DELAWARE

County	Voting age population ¹	Vote cast, 1964 presidential election ²	Percentage of population
Kent.....	38,234	22,054	57.7
New Castle.....	182,128	146,893	79.3
Sussex.....	45,887	32,378	70.8

¹ Census of Population, 1960, vol. 1, pt. 8, table 27, p. 32.

² Report of the secretary of state for the State of Delaware on file at the Government Affairs Institute, Washington, D.C.

HAWAII

County	Voting age population ¹	Vote cast, 1964 presidential election ²	Percentage of population
Hawaii.....	34,504	24,973	72.2
Honolulu (Oahu).....	284,931	155,395	54.5
Kauai.....	16,351	10,634	64.8
Maua.....	24,070	16,219	67.4

¹ Census of Population, 1960, vol. 1, pt. 13, table 27, pp. 36-37.

² Report of the secretary of state for the State of Hawaii on file at the Government Affairs Institute, Washington, D.C.

GROUP C.—Political subdivisions in which the use of a test or device would not be suspended because more than 50 percent voted—Continued

IDAHO

County	Voting age population ¹	Vote cast, 1964 presidential election ²	Percentage of population
Ada.....	53,966	45,043	83.4
Adams.....	1,703	1,459	85.7
Bannock.....	26,303	21,308	81.0
Bear Lake.....	3,623	3,265	89.9
Benewah.....	3,637	3,777	103.8
Bingham.....	14,310	10,595	74.0
Blaine.....	2,808	2,454	87.4
Boise.....	937	863	92.1
Bonner.....	9,187	7,303	79.7
Bonneville.....	24,288	20,378	83.9
Boundary.....	2,323	2,453	105.6
Burke.....	1,838	1,468	80.0
Camas.....	529	574	108.7
Canyon.....	33,333	24,067	72.2
Caribou.....	3,066	2,725	88.9
Cassia.....	8,297	6,620	79.7
Clark.....	440	448	101.8
Clearwater.....	5,104	3,213	62.9
Custer.....	1,632	1,434	87.9
Franklin.....	4,317	3,933	91.1
Framont.....	4,509	3,915	86.8
Gem.....	5,135	5,307	103.3
Gooding.....	5,530	4,375	79.1
Idaho.....	7,841	6,168	78.7
Jefferson.....	5,730	4,811	84.0
Jerome.....	5,320	4,941	93.1
Kootenai.....	17,638	14,347	81.3
Latah.....	12,325	8,724	70.8
Lemhi.....	3,374	2,663	78.9
Lewis.....	2,601	2,034	78.2
Lincoln.....	2,096	1,586	75.7
Madison.....	4,312	4,050	94.0
Minidoka.....	7,324	5,936	81.1
Nas Perce.....	15,045	13,147	87.4
Oakda.....	1,332	1,812	136.1
Owyhee.....	3,618	2,392	66.1
Payette.....	7,331	5,267	71.9
Power.....	2,214	2,127	96.1
Shoshone.....	11,937	8,079	67.7
Teton.....	1,290	1,273	98.7
Twin Falls.....	24,195	19,182	79.3
Valley.....	2,127	2,106	99.0
Washington.....	5,035	3,632	72.1

¹ Census of Population, 1960, vol. 1, pt. 14, table 27, pp. 49-59.

² Report of the secretary of state for the State of Idaho on file at the Government Affairs Institute, Washington, D.C.

MAINE

County	Voting age population ¹	Vote cast, 1964 presidential election ²	Percentage of population
Androscoggin.....	82,737	87,531	105.8
Cumberland.....	113,100	73,200	64.7
Franklin.....	11,842	8,671	73.3
Hancock.....	20,291	13,719	67.6
Kennebec.....	54,406	30,120	55.4
Knox.....	18,418	11,426	62.0
Lincoln.....	11,736	9,063	77.4
Oxford.....	26,436	13,956	52.8
Penobscott.....	73,715	43,215	58.6
Piscataquis.....	10,640	7,254	68.2
Sagadahoc.....	13,934	9,739	69.9
Somerset.....	22,309	16,235	72.8
Waldo.....	13,349	8,721	65.4
Washington.....	20,560	13,128	63.9
York.....	61,045	47,422	77.7

¹ Census of Population, 1960, vol. 1, pt. 21, table 27, pp. 55-59.

² Report of the secretary of state for the State of Maine on file at the Government Affairs Institute, Washington, D.C.

GROUP C.—Political subdivisions in which the use of a test or device would not be suspended because more than 50 percent voted—Continued

MASSACHUSETTS

County	Voting age population ¹	Vote cast, 1964 presidential election ²	Percentage of population
Barnstable.....	44,244	35,355	79.9
Berkshire.....	88,834	64,331	72.4
Bristol.....	254,093	188,637	74.3
Dukes.....	2,889	3,214	83.1
Essex.....	391,671	282,945	72.3
Franklin.....	34,280	25,624	74.7
Hampden.....	268,284	178,219	66.4
Hampshire.....	62,624	43,645	69.7
Middlesex.....	770,246	678,80	74.9
Nantucket.....	2,424	1,787	73.7
Norfolk.....	313,071	255,021	81.5
Plymouth.....	181,188	120,335	79.5
Suffolk.....	622,396	298,234	57.1
Worcester.....	397,293	273,331	74.4

¹ Census of Population, 1960, vol. 1, pt. 23, table 27, pp. 103-106.

² Report of the secretary of state for the State of Massachusetts on file at the Government Affairs Institute, Washington, D.C.

NEW HAMPSHIRE

County	Voting age population ¹	Vote cast, 1964 presidential election ²	Percentage of population
Belknap.....	13,019	13,032	77.3
Carroll.....	10,232	9,015	88.1
Cheshire.....	28,688	19,664	78.4
Coe.....	22,410	16,819	75.1
Grafton.....	29,805	21,027	71.8
Hillsboro.....	110,431	89,739	81.3
Merrimack.....	43,048	32,332	75.2
Rockingham.....	50,637	48,764	78.3
Strafford.....	35,849	26,079	72.7
Sullivan.....	17,189	12,762	74.3

¹ Census of Population, 1960, vol. 1, pt. 31, table 27, pp. 39-41.

² Report of the secretary of state for the State of New Hampshire on file at the Government Affairs Institute, Washington, D.C.

GROUP C.—Political subdivisions in which the use of a test or device would not be suspended because more than 50 percent voted—Continued

NEW YORK

County	Voting age population ¹	Vote cast, 1904 presidential election ²	Percentage of population
Albany.....	174,414	149,026	86.0
Allegany.....	25,264	18,393	72.7
Bronx.....	965,315	555,300	57.6
Broome.....	132,408	92,254	69.7
Cattaraugus.....	48,299	33,514	69.4
Cayuga.....	45,196	36,218	80.1
Chautauqua.....	90,925	62,937	69.2
Chemung.....	59,014	41,773	70.1
Chemung.....	25,743	19,276	74.9
Columbia.....	41,713	24,914	59.7
Cortland.....	39,401	24,126	61.2
Delaware.....	24,233	17,677	72.6
Dutchess.....	23,445	20,442	87.3
Dutchess.....	118,036	80,995	68.6
Essex.....	660,623	477,628	72.3
Franklin.....	21,075	17,023	80.8
Fulton.....	28,951	17,673	61.1
Genesee.....	83,011	23,688	28.5
Greene.....	32,246	24,398	75.7
Hamilton.....	20,188	18,204	90.2
Herkimer.....	2,709	2,958	109.4
Jefferson.....	41,466	30,966	74.7
Kings.....	53,111	38,638	72.7
Lewis.....	1,745,406	941,567	53.9
Livingston.....	18,054	10,043	55.6
Madison.....	28,698	21,022	73.2
Monroe.....	31,140	23,606	75.8
Montgomery.....	369,189	290,326	78.6
Nassau.....	37,990	28,463	74.9
New York.....	765,494	640,721	83.7
Niagara.....	1,267,667	846,557	66.8
Onondaga.....	144,912	97,260	67.1
Ontario.....	184,595	116,854	63.4
Orleans.....	253,518	169,636	66.9
Oswego.....	41,599	31,859	76.6
Otsego.....	116,824	80,108	68.6
Putnam.....	20,872	16,177	77.5
Queens.....	50,021	37,831	75.6
Rensselaer.....	31,053	24,287	78.2
Richmond.....	19,748	22,205	112.4
Rockland.....	1,240,073	838,769	67.6
St. Lawrence.....	88,542	72,983	82.4
Saratoga.....	137,461	95,028	69.1
Schenectady.....	83,365	73,424	88.1
Schoharie.....	62,555	42,421	67.8
Schoharie.....	54,806	43,563	79.3
Schoharie.....	99,183	74,960	75.6
Schoharie.....	13,631	11,016	80.9
Schoharie.....	8,651	7,414	85.8
Seneca.....	20,232	18,591	91.9
Steuben.....	58,795	41,274	70.2
Suffolk.....	399,989	330,016	82.5
Sullivan.....	29,177	25,441	87.2
Tioga.....	21,754	17,847	82.0
Tompkins.....	36,397	25,666	69.8
Ulster.....	75,551	60,423	80.0
Warren.....	27,256	21,064	77.3
Washington.....	29,162	22,480	77.0
Wayne.....	41,831	29,765	71.2
Westchester.....	526,616	399,626	75.9
Wyoming.....	21,477	16,214	75.5
Yates.....	11,339	8,862	78.2

¹ Census of Population, 1900, vol. 1, pt. 34, table 27, pp. 155-173.

² Report of the secretary of state for the State of New York on file at the Government Affairs Institute, Washington, D.C. These figures include ballots which were spoiled.

GROUP C.—Political subdivisions in which the use of a test or device would not be suspended because more than 50 percent voted—Continued

NORTH CAROLINA

County	Voting age population ¹	Vote cast, 1964 presidential election ²	Percentage of population
Alamance	80,184	30,874	60.9
Alexander	8,876	7,482	84.3
Alleghany	4,707	3,941	83.7
Ashe	11,891	9,156	80.4
Avery	6,631	4,161	62.8
Brunswick	10,772	7,961	73.9
Buncombe	80,750	50,995	63.1
Burke	31,427	22,698	72.9
Cabarrus	40,545	25,099	61.9
Caldwell	27,248	19,579	71.9
Carteret	17,062	10,620	62.3
Catawba	41,838	22,930	54.8
Chatham	15,253	9,408	61.7
Cherokee	9,928	6,922	69.7
Clay	8,149	2,748	33.7
Cleveland	85,880	18,710	21.8
Columbus	25,212	13,475	53.4
Currituck	8,921	2,198	24.6
Dare	3,704	2,348	63.4
Davidson	45,953	31,027	67.5
Davie	9,978	7,548	75.6
Duplin	21,432	10,090	47.1
Durham	66,573	38,138	57.3
Forsyth	112,171	61,891	55.2
Gaston	72,519	37,328	51.5
Graham	3,449	3,135	90.9
Gulford	144,040	76,604	53.2
Harnett	26,211	13,380	51.0
Haywood	23,558	16,289	69.1
Henderson	22,282	14,946	67.1
Iredell	56,611	24,122	42.6
Jackson	10,068	8,068	80.3
Johnston	34,664	17,849	51.5
Jones	5,499	2,905	52.8
Lee	14,844	7,488	50.4
Lincoln	10,430	12,173	80.1
McDowell	15,448	10,488	67.9
Macon	8,758	8,674	98.5
Madison	6,640	7,155	74.3
Mecklenburg	157,937	96,171	61.0
Mitchell	8,005	4,999	62.4
Montgomery	10,194	7,318	71.8
Moore	20,536	11,546	56.2
New Hanover	42,210	24,724	58.6
Orange	24,343	14,091	57.9
Pamlico	5,301	2,900	54.7
Pender	9,716	5,160	53.2
Polk	8,870	5,782	65.2
Randolph	36,068	24,377	67.6
Richmond	21,833	11,639	53.3
Rockingham	40,836	20,495	50.2
Rowan	50,075	29,738	59.4
Rutherford	26,592	16,656	62.6
Sampson	25,581	15,761	61.6
Stanly	24,230	16,855	69.6
Stokes	12,611	9,562	75.8
Surry	28,219	17,760	63.0
Swain	4,634	3,628	78.3
Transylvania	9,062	8,030	88.6
Tyrrell	2,446	1,370	56.0
Wake	99,655	54,195	54.4
Washington	7,008	3,649	52.1
Watauga	5,765	7,963	81.5
Wilkes	25,223	20,190	80.0
Yadkin	18,613	9,498	51.0
Yancey	7,982	5,718	71.6

¹ Census of Population, 1960, vol. 1, pt. 35, table 27, pp. 98-122.

² Report of the secretary of state for the State of North Carolina on file at the Governmental Affairs Institute, Washington, D.C.

Group C.—Political subdivisions in which the use of a test or device would not be suspended because more than 50 percent voted—Continued

OREGON

County	Voting age population ¹	Vote cast, 1964 presidential election ²	Percentage of population
Baker.....	10,809	8,588	62.70
Benton.....	22,098	16,486	74.60
Clackamas.....	67,146	57,043	84.90
Clatsop.....	17,662	12,862	70.10
Columbia.....	13,888	10,268	77.00
Cooe.....	31,910	21,149	66.27
Crook.....	5,451	3,586	65.70
Curry.....	5,182	4,688	67.60
Deschutes.....	18,928	10,095	72.47
Douglas.....	28,870	23,717	66.10
Gilliam.....	1,832	1,220	66.60
Grant.....	4,559	3,032	66.50
Harney.....	3,922	2,759	69.10
Hood River.....	8,146	5,472	67.10
Jackson.....	46,348	34,084	75.10
Jefferson.....	3,858	2,933	75.90
Josephine.....	18,504	13,801	74.50
Klamath.....	23,047	17,599	62.70
Lake.....	4,289	2,723	63.40
Lane.....	94,003	74,200	78.00
Lincoln.....	15,278	10,323	67.50
Linn.....	33,692	23,306	69.70
Malheur.....	12,694	7,068	61.00
Marion.....	73,025	51,200	69.20
Morrow.....	2,689	2,097	72.60
Multnomah.....	335,281	243,749	72.60
Polk.....	16,742	11,629	73.80
Sherman.....	1,492	1,353	90.60
Tillamook.....	10,971	7,573	69.00
Umatilla.....	36,622	19,566	53.80
Union.....	10,992	7,469	68.10
Wallowa.....	4,308	2,848	66.10
Wasco.....	12,238	8,597	70.10
Washington.....	63,916	50,181	68.00
Wheeler.....	1,566	796	60.90
Yamhill.....	19,592	14,463	73.80

¹ Census of population, 1960, vol. 1, pt. 3, table 27, pp. 57-66.

² Report of the secretary of state for the State of Oregon on file at the Government Affairs Institute, Washington, D.C.

GROUP C.—Political subdivisions in which the use of a test or device would not be suspended because more than 50 percent voted—Continued

VIRGINIA

County and independent city	Voting age population, 1960 ¹	Vote cast, 1964 presidential election ²	Percentage of population
County:			
Amelia.....	4,185	2,230	63.5
Appomattox.....	5,387	3,791	70.4
Arlington.....	107,578	54,863	50.5
Chesterfield.....	40,717	25,871	63.5
Craig.....	2,036	1,244	60.5
Cumberland.....	3,466	1,977	57.0
Dickenson.....	9,555	5,639	57.2
Fairfax ³	142,628	79,617	55.8
Giles.....	9,561	5,167	52.4
Grayson.....	10,502	6,352	60.5
Greensville.....	8,884	4,619	53.9
Henrico.....	70,219	42,082	59.9
King and Queen.....	3,362	1,729	51.5
Lancaster.....	6,991	2,911	52.1
Lee.....	14,172	8,828	61.9
Middlesex.....	3,949	1,995	50.5
New Kent.....	2,554	1,365	53.4
Page.....	9,392	5,419	57.7
Prince Edward.....	8,021	4,064	50.7
Roanoke.....	37,225	19,536	52.5
Russell.....	14,180	7,357	52.0
Powhatan.....	8,030	2,152	54.6
Scott.....	14,819	9,269	62.5
Shenandoah.....	13,604	7,168	52.7
Surry.....	8,321	2,140	64.4
York.....	12,024	6,389	53.1
Independent city:			
Charlottesville.....	19,278	9,704	50.4
Clifton Forge.....	3,520	2,102	59.7
Colonial Heights.....	6,866	3,620	59.7
Fairfax ⁴	7,087	4,766	67.2
Falls Church.....	5,884	3,707	68.5
Hopewell.....	10,403	5,691	54.7
Radford.....	5,365	3,358	62.6
South Boston.....	3,608	1,843	51.1
Virginia Beach ⁵	45,868	25,442	52.2
Williamsburg.....	4,092	2,063	51.1

¹ Census of Population, 1960, vol. 1, pt. 43, table 27, pp. 75 to 107.

² Report of the secretary of state for the State of Virginia on file at the Governmental Affairs Institute, Washington, D.C.

³ The city of Fairfax, which is located within the county of Fairfax, became an independent city subsequent to 1960. To properly reflect the number of persons of voting age residing in the county of Fairfax with the total vote cast in that county in the presidential election of 1964, the number of persons of voting age residing in the city of Fairfax has been subtracted from the number of persons of voting age residing in the county.

⁴ See footnote 3, supra.

⁵ Census of Population, 1960, vol. 1, pt. 45, table 20, p. 45.

⁶ Virginia Beach and Princess Anne County were consolidated Jan. 1, 1963.

GROUP C.—Political subdivisions in which the use of a test or device would not be suspended because more than 50 percent voted—Continued

WASHINGTON

County	Voting age population ¹	Vote cast, 1964 presidential election ²	Percentage of population
Adams.....	5,553	4,273	76.9
Asotin.....	7,746	5,436	70.1
Benton.....	34,063	26,372	83.3
Chelan.....	24,696	17,922	72.1
Clallam.....	17,902	13,455	75.1
Clark.....	55,815	41,790	74.8
Columbia.....	2,875	2,187	76.0
Cowlitz.....	33,746	24,601	72.6
Douglas.....	8,335	6,376	76.4
Ferry.....	2,155	1,459	68.9
Franklin.....	12,837	10,058	78.3
Garfield.....	1,797	1,532	85.2
Grant.....	25,080	14,427	57.5
Grays Harbor.....	33,377	22,027	66.0
Island.....	10,074	6,999	69.7
Jefferson.....	5,642	4,456	78.9
King.....	578,897	450,640	77.8
Kitsap.....	50,495	37,714	74.6
Kittitas.....	12,267	8,692	70.9
Klickitat.....	7,793	5,674	72.8
Lewis.....	23,692	19,022	74.0
Lincoln.....	9,738	5,218	77.3
Mason.....	9,841	8,071	82.0
Okanogan.....	14,922	10,495	70.3
Pacific.....	9,302	6,850	73.7
Pend Oreille.....	4,117	2,955	72.0
Pierce.....	195,195	129,978	64.5
San Juan.....	1,992	1,750	87.8
Skagit.....	31,650	22,806	70.8
Skamania.....	8,079	2,414	29.4
Snohomish.....	99,911	81,405	81.4
Spokane.....	183,063	111,581	60.8
Stevens.....	10,478	7,528	71.8
Thurston.....	32,790	27,021	82.4
Wahkiakum.....	2,091	1,624	77.6
Walla Walla.....	26,406	17,694	66.6
Whatcom.....	42,700	31,422	73.5
Whitman.....	17,925	13,638	75.5
Yakima.....	62,941	52,730	83.8

¹ Census of Population, 1960, vol. 1, pt. 49, table 27, pp. 65-74.

² Report of the secretary of state for the State of Washington on file at the Government Affairs Institute, Washington, D.C.

GROUP C.—Political subdivisions in which the use of a test or device would not be suspended because more than 50 percent voted—Continued

WYOMING

County	Voting age population ¹	Vote cast, 1964 presidential election ²	Percentage of population
Albany.....	12,166	8,942	73.5
Big Horn.....	6,591	5,358	81.30
Campbell.....	3,380	2,802	83.00
Carbon.....	8,881	6,482	72.99
Converse.....	3,752	2,809	74.86
Crook.....	2,009	1,994	78.86
Fremont.....	14,821	10,794	72.87
Goshute.....	6,924	5,858	77.81
Hot Springs.....	3,804	2,806	68.56
Johnson.....	3,264	2,492	76.35
Laramie.....	25,110	24,622	70.13
Lincoln.....	4,790	4,064	84.85
Natrona.....	28,239	21,302	75.45
Niobrara.....	2,872	1,955	68.04
Park.....	9,282	7,448	80.25
Platte.....	4,800	3,350	70.14
Sheridan.....	11,989	9,286	77.06
Sublette.....	2,160	1,691	78.28
Sweetwater.....	10,630	7,913	74.44
Teton.....	1,807	2,049	113.36
Uinta.....	4,443	3,115	70.13
Washakie.....	4,750	3,408	71.87
Weston.....	4,884	2,692	55.12

¹ Census of Population, 1960, vol. 1, pt. 52, table 27, pp. 35-40.

² Report of the secretary of state for the State of Wyoming on file at the Government Affairs Institute, Washington, D.C.

VOTING RIGHTS

1694 -

HEARINGS
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
EIGHTY-NINTH CONGRESS
FIRST SESSION
ON
S. 1564
TO ENFORCE THE 15TH AMENDMENT TO THE CONSTITUTION
OF THE UNITED STATES

MARCH 23, 24, 25, 29, 30, 31 AND APRIL 1, 2, 5, 1965

PART 1

Printed for the use of the Committee on the Judiciary



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VOTING RIGHTS

TUESDAY, MARCH 23, 1965

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to call, at 10:35 a.m., in room 2228, New Senate Office Building, Senator James O. Eastland (chairman) presiding.

Present: Senators Eastland, Johnston, Ervin, Long of Missouri, Hart, Kennedy of Massachusetts, Bayh, Tydings, Dirksen, Hruska, Scott, and Javits.

Also present: Joseph A. Davis, chief clerk; Palmer Lipscomb, Robert B. Young, and Thomas B. Collins, professional staff members of the committee.

The CHAIRMAN. The committee will come to order.

The purpose of this hearing is to consider the proposed bill, S. 1564, to enforce the 15th amendment of the Constitution of the United States.

(S. 1564 is as follows:)

[S. 1564, 89th Cong., 1st sess.]

A BILL To enforce the fifteenth amendment to the Constitution of the United States

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall be known as the "Voting Rights Act of 1965".

SEC. 2. No voting qualification or procedure shall be imposed or applied to deny or abridge the right to vote on account of race or color.

SEC. 3. (a) No person shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device, in any State or in any political subdivision of a State which (1) the Attorney General determines maintained on November 1, 1964, any test or device as a qualification for voting, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964.

(b) The phrase "test or device" shall mean any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

(c) Any State with respect to which determinations have been made under subsection (a) or any political subdivision with respect to which such determinations have been made as a separate unit, may file in a three-judge district court convened in the District of Columbia an action for a declaratory judgment against the United States, alleging that neither the petitioner nor any person acting under color of law has engaged during the ten years preceding the filing of the action in acts or practices denying or abridging the right to vote for reasons of race or color. If the court determines that neither the petitioner nor any person acting under color of law has engaged during such period in any act or prac-

tice denying or abridging the right to vote for reasons of race or color, the court shall so declare and the provisions of subsection (a) and the examiner procedure established by this Act shall, after judgment, be inapplicable to the petitioner. Any appeal from a judgment of a three-judge court convened under this subsection shall lie to the Supreme Court.

No declaratory judgment shall issue under this subsection with respect to any petitioner for a period of ten years after the entry of a final judgment of any court of the United States, whether entered prior to or after the enactment of this Act, determining that denials or abridgments of the right to vote by reason of race or color have occurred anywhere in the territory of such petitioner.

Sec. 4. (a) Whenever the Attorney General certifies (1) that he has received complaints in writing from twenty or more residents of a political subdivision with respect to which determinations have been made under section 3(a) alleging that they have been denied the right to vote under color of law by reason of race or color, and that he believes such complaints to be meritorious, or (2) that in his judgment the appointment of examiners is otherwise necessary to enforce the guarantees of the fifteenth amendment, the Civil Service Commission shall appoint as many examiners in such subdivision as it may deem appropriate to prepare and maintain lists of persons eligible to vote in Federal, State, and local elections. Such appointments shall be made without regard to the civil service laws and the Classification Act of 1949, as amended, and may be terminated by the Commission at any time. Examiners shall be subject to the provisions of section 9 of the Act of August 2, 1939, as amended (the Hatch Act). An examiner shall have the power to administer oaths.

(b) A determination or certification of the Attorney General or of the Director of the Census under section 3 or 4 shall be final and effective upon publication in the Federal Register.

Sec. 5. (a) The examiners for each political subdivision shall examine applicants concerning their qualifications for voting. An application to an examiner shall be in such form as the Commission may require and shall contain allegations that the applicant is not otherwise registered to vote, and that, within ninety days preceding his application, he has been denied under color of law the opportunity to register or to vote or has been found not qualified to vote by a person acting under color of law: *Provided*, That the requirement of the latter allegation may be waived by the Attorney General.

(b) Any person whom the examiner finds to have the qualifications prescribed by State law in accordance with instructions received under section 6(b) shall promptly be placed on a list of eligible voters. A challenge to such listing may be made in accordance with section 6(a) and shall not be the basis for a prosecution under any provision of this Act. The list shall be available for public inspection and the examiner shall certify and transmit such list, and any supplements as appropriate, at the end of each month, to the offices of the appropriate election officials, with copies to the Attorney General and the attorney general of the State. Any person whose name appears on such a list shall be entitled and allowed to vote in the election district of his residence unless and until the appropriate election officials shall have been notified that such person has been removed from such list in accordance with subsection (d): *Provided*, That no person shall be entitled to vote in any election by virtue of this Act unless his name shall have been certified and transmitted on such a list to the offices of the appropriate election officials at least forty-five days prior to such election.

(c) The examiner shall issue to each person appearing on such a list a certificate evidencing his eligibility to vote.

(d) A person whose name appears on such a list shall be removed therefrom by an examiner if (1) he has been successfully challenged in accordance with the procedure prescribed in section 6(a), or (2) he has been determined by an examiner (i) not to have voted at least once during three consecutive years while listed, or (ii) to have otherwise lost his eligibility to vote.

(e) No person shall be denied the right to vote for failure to pay a poll tax if he tenders payment of such tax for the current year to an examiner, whether or not such tender would be timely or adequate under State law. An examiner shall have authority to accept such payment from any person authorized to make an application for listing, and shall issue a receipt for such payment. The examiner shall transmit promptly any such poll tax payment to the office of the State or local official authorized to receive such payment under State law, together with the name and address of the applicant.

SEC. 6. (a) Any challenge to a listing on an eligibility list shall be heard and determined by a hearing officer appointed by and responsible to the Civil Service Commission and under such rules as the Commission shall by regulation prescribe. Such challenge shall be entertained only if made within ten days after the challenged person is listed, and if supported by the affidavit of at least two persons having personal knowledge of the facts constituting grounds for the challenge, and such challenge shall be determined within seven days after it has been made. A petition for review of the decision of the hearing officer may be filed in the United States court of appeals for the circuit in which the person challenged resides within fifteen days after service of such decision by mail on the moving party, but no decision of a hearing officer shall be overturned unless clearly erroneous. Any person listed shall be entitled and allowed to vote pending final determination by the hearing officer and by the court.

(b) The times, places, and procedures for application and listing pursuant to this Act and removals from the eligibility lists shall be prescribed by regulations promulgated by the Civil Service Commission and the Commission shall, after consultation with the Attorney General, instruct examiners concerning the qualifications required for listing.

SEC. 7. No person, whether acting under color of law or otherwise, shall fail or refuse to permit a person whose name appears on a list transmitted in accordance with section 5(b) to vote, or fail or refuse to count such person's vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote under the authority of this Act.

SEC. 8. Whenever a State or political subdivision for which determinations are in effect under section 3(a) shall enact any law or ordinance imposing qualifications or procedures for voting different than those in force and effect on November 1, 1964, such law or ordinance shall not be enforced unless and until it shall have been finally adjudicated by an action for declaratory judgment brought against the United States in the District Court for the District of Columbia that such qualifications or procedures will not have the effect of denying or abridging rights guaranteed by the fifteenth amendment. All actions hereunder shall be heard by a three-judge court and there shall be a right of direct appeal to the Supreme Court.

SEC. 9. (a) Whoever shall deprive or attempt to deprive any person of any right secured by section 2 or 3 or who shall violate section 7, shall be fined not more than \$5,000, or imprisoned not more than five years, or both.

(b) Whoever, within a year following an election in a political subdivision in which an examiner has been appointed (1) destroys, defaces, mutilates, or otherwise alters the marking of a paper ballot cast in such election, or (2) alters any record of voting in such election made by a voting machine or otherwise, shall be fined not more than \$5,000, or imprisoned not more than five years, or both.

(c) Whoever conspires to violate the provisions of subsection (a) or (b) of this section, or interferes with any right secured by section 2, 3, or 7, shall be fined not more than \$5,000, or imprisoned not more than five years, or both.

(d) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 2, 3, 7, or 8 or subsection (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, an action for preventive relief, including an application for a temporary or permanent injunction, restraining order, or other order, and including an order directed to the State and State or local election officials to require them to honor listings under this Act.

(e) Whenever a person alleges to an examiner within twenty-four hours after the closing of the polls that notwithstanding his listing under this Act he has not been permitted to vote or that his vote was not counted, the examiner shall forthwith notify the United States attorney for the judicial district if such allegation in his opinion appears to be well founded. Upon receipt of such notification, the United States attorney may forthwith apply to the district court for an order enjoining certification of the results of the election, and the court shall issue such an order pending a hearing to determine whether the allegations are well founded. In the event the court determines that persons who are entitled to vote under the provisions of this Act were not permitted to vote or their votes were not counted, it shall provide for the casting or count-

ing of their ballots and require the inclusion of their votes in the total vote before any person shall be deemed to be elected by virtue of any election with respect to which an order enjoining certification of the results has been issued.

(f) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether an applicant for listing under this Act shall have exhausted any administrative or other remedies that may be provided by law.

Sec. 10. Listing procedures shall be terminated in any political subdivision of any State whenever the Attorney General notifies the Civil Service Commission (1) that all persons listed by the examiner for such subdivision have been placed on the appropriate voting registration roll, and (2) that there is no longer reasonable cause to believe that persons will be deprived of or denied the right to vote on account of race or color in such subdivision.

Sec. 11. (a) All cases of civil and criminal contempt arising under the provisions of this Act shall be governed by section 151 of the Civil Rights Act of 1957 (42 U.S.C. 1955).

(b) No court other than the District Court for the District of Columbia shall have jurisdiction to issue any declaratory judgment or any restraining order or temporary or permanent injunction against the execution or enforcement of any provision of this Act or any action of any Federal officer or employee pursuant hereto.

(c) The term "vote" shall have the same meaning as in section 2004 of the Revised Statutes (42 U.S.C. 1971 (e)).

(d) Any statement made to an examiner may be the basis for a prosecution under section 1001 of title 18, United States Code.

Sec. 12. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

Sec. 13. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

The CHAIRMAN. The committee is acting under the mandate of the Senate to consider the bill and to report back to the Senate not later than Friday, April 9. Due to the time limitation, it will probably be impossible for the committee to take oral testimony from everyone, or even a substantial number of those who wish to be heard. Statements must be reduced to writing and when filed and considered, will be made part of the record of hearing.

This morning, the first witness we are pleased to have with us is the Attorney General of the United States.

Before hearing from the Attorney General, I would like to ask if any of the members have a statement they would like to make at this time?

Senator LONG. Mr. Chairman, I do not have a statement prepared at this time, but sometime in the next 2 or 3 days I will have and file it with the committee.

(The statement submitted is as follows:)

STATEMENT BY SENATOR EDWARD V. LONG IN SUPPORT OF S. 1564

Mr. Chairman, almost 200 years ago, 56 American patriots set their names to a document proclaiming eternal hope for all mankind. These wisest of men came from every corner of the Nation from the North and from the South, from New York and from Georgia, from Pennsylvania and from South Carolina. Together, they gave birth to a new nation and mutually pledged their lives, their fortunes, and their sacred honor to support this new nation.

These men of freedom declared for all living and future generations to hear that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty, and the pursuit of happiness. They further declared that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed.

Now, Mr. Chairman, almost all Americans are very familiar with these words of the Declaration of Independence. However, I fear most of us cannot so easily recall to mind the statement of facts set out in the Declaration by our Founding Fathers to prove to the world the necessity of their action. A number of these statements are closely related to the issue involved in the pending voting bill and their restatement may allow us to see more clearly our responsibilities and obligations.

Referring to the King of Great Britain, they said:

"He has refused to pass other laws for the accommodation of large districts of people, unless those people would relinquish the right of Representation in the Legislature, a right inestimable to them and formidable to tyrants only.

"He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their public Records, for the sole purpose of fatiguing them into compliance with his measures.

"He has dissolved Representative Houses repeatedly, for opposing with manly firmness his invasions on the rights of the people.

"He has refused for a long time, after such dissolutions, to cause others to be elected; whereby the Legislative powers, incapable of Annihilation, have returned to the People at large for their exercise.

"He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; given his Assent to their Acts of pretended Legislation:

"For imposing Taxes on us without our Consent;

"For suspending our own Legislatures, and declaring themselves invested with power to legislate for us in all cases whatsoever.

"In every stage of these Oppressions We have Petitioned for Redress in the most humble terms.

"Our repeated Petitions have been answered only by repeated injury."

These statements tell us how significant to freedom our Founding Fathers considered the right to vote. They also tell us that the patience of freemen can only be tried so far by dilatory and evasive action which denies liberty. They tell us that freedom demands action.

One hundred years ago the law of the land was changed to correct a great evil which our Nation had allowed to exist. Slavery was abolished, and the right to vote was guaranteed against discrimination because of race, color, or previous condition of servitude. At the same time, Congress was given the power to implement and to enforce these changes in our basic law. Unfortunately, in certain parts of our Nation the right to vote free from racial discrimination remains today a mere change in our Nation's basic law. This right has yet to become a reality. Congress has attempted on a number of occasions to implement the 15th amendment but has failed in its efforts due to dilatory and evasive action by certain State and local officials and in some instances by outright defiance of the law.

Mr. Chairman, it is 'way past time when our patience must come to an end. Freedom demands that legislative action be taken now to remove effectively all racial barriers to the right to vote. Men and women of all races must have an equal voice in their government and this can only be obtained through equal access to the ballot box.

Mr. Chairman, the President of the United States has sent to the Congress a proposal of great merit. It is the subject of these hearings. With a few modifications, I believe it would make possible the ultimate achievement of the promise of the 15th amendment. At least, it would go a long way in making good on this century-old promise.

The changes in the bill which I believe should be made relate to the poll tax where it is used as a means to deny the right to vote because of race and to areas where racial discrimination in voting exists but which would not be reached under present provisions. The hearings and debate may well bring out other needed changes.

Mr. Chairman, I am quite hopeful that this committee will report favorably a sound and effective voting measure and that the Congress will take final action on such a measure without undue delay.

Senator HART. Mr. Chairman, I have no statement. I hope that we proceed as the Senate has directed, expeditiously to consider the bill and to report our judgment to the Senate in order that legislation which the overwhelming majority of the people of America expect us to enact will be on the books without further delay.

Senator ERVIN. Mr. Chairman, I have no statement to make at this time. I do wish to voice the observation that I think it is a rather tragic thing for the Senate to put a time limitation on the consideration of this bill by the committee, because certainly, it is not very wise to put a time limit upon the search of the Constitution or for the search of ways to direct and legislate a situation. The people of America instead of taking this time for this legislation, might well spend all the time they have between now and the Easter vacation praying that those who are sworn to uphold the Constitution will apply their knowledge.

Senator TYDINGS. I have nothing.

Senator SCOTT. Mr. Chairman, I would like to ask permission to submit a statement as of the opening of the hearings which I will prepare and submit as soon as possible.

(The statement is as follows:)

STATEMENT BY U.S. SENATOR HUGH SCOTT, OF PENNSYLVANIA

Mr. Chairman, as a member of this committee, I appreciate the opportunity to make known my views on the critical subject of voting rights.

The events of recent days in the State of Alabama underscore the urgency in the need for additional legislation to implement the 15th amendment of the Constitution. The 15th amendment provides that the right of citizens of the United States to vote shall not be denied or abridged by any State on account of race or color.

The 15th amendment applies to all citizens and to all States. Its meaning is clear—no matter where he lives, a man's right to vote shall not depend upon his race or color. If he is a Negro, he shall have the opportunity to register and to cast his ballot with the same ease as do white citizens of the same State.

The record is clear, Mr. Chairman. The facts are all in. Nearly a century of experience demonstrates that the Negro is systematically and deliberately being denied the right to vote in several States and counties of the South. So widespread is this discrimination and so purposeful is its application that the Department of Justice has been unable to make substantial progress in securing Negro voting rights with the statutory tools now available to it.

The Negro has patiently waited 85 years since the ratification of the 15th amendment for the enfranchisement to which he is entitled. His patience is now at an end, and so is that of every American who believes in democracy and the fundamental equality of man under law.

Mr. Chairman, I wholeheartedly support the basic purpose and policy of Senate bills 1517 and 1564, in which I have joined as a cosponsor. Both of these bills provide for the appointment of Federal voting registrars where the percentage of persons registered and voting in a State or county is so low as to suggest that existing officials have persisted in discriminating against members of the Negro race. Both bills provide severe criminal remedies for interference with the registration or voting process. However, they employ somewhat different formulas in determining those States and counties to which their provisions will apply. The basic improvements which I feel can be made in the bills now before us relate to these formulas.

Under S. 1564, the so-called leadership-administration bill, Federal examiners can be appointed only in a State (1) which has a "test or device"—basically a literacy test—as a qualification for voting; and (2) in which less than 50 percent of the persons of voting age were registered or voted in the last presidential election. By requiring the existence of such a literacy test for the bill to apply, the formula falls to take in several States and counties which have extremely low Negro voting percentages.

Most notable among this excluded group is the State of Texas. Those responsible for drafting this bill did not feel it necessary to arrive at some formula which would include Texas. Yet, only 44 percent of those Texans of voting age went to the polls in this last presidential election. In 137 counties of Texas, the percentage was below 50 percent.

I feel very strongly, Mr. Chairman, that the formula should be expanded to include all States and counties where voting figures indicate that qualified citizens are being denied the right to vote on the basis of race or color. The discriminatory application of a literacy test is but one means by which this 15th amendment right is being abridged.

I believe that the bill can be validly expanded, Mr. Chairman, to include States such as Texas, which have no literacy tests, by the addition of an alternative formula. Such formula should provide that the bill would be equally applicable if less than 25 percent of the Negroes of voter age residing in any State or county were registered or voted in the last presidential election.

Although census figures are not compiled by race, the statistics of the U.S. Commission on Civil Rights could certainly be used for this purpose. If it is deemed necessary to place the burden of proof as to the validity of these statistics on the Government for constitutional reasons, this burden could quite properly be eased by requiring the Government to show only that these figures are "substantially correct." A possible procedure is to require the Government to show the method by which its statistics were compiled and the probability that they are substantially correct. It would then be entirely constitutional to compel a party challenging these statistics to show more than just isolated instances of error, but a pattern of error which destroys the validity of the figures for the purpose for which they are being employed—that is, not to prove an exact statistical fact but to raise a rebuttable presumption of discrimination in violation of the 15th amendment.

Such an alternative formula would enable the bill to hit the whole target rather than just a part. It would apply to every State where voting rights were being abridged on the basis of race or color, and not just those which have a literacy test. It would provide not just a single weapon, but an arsenal of weapons to be used wherever discrimination in violation of the 15th amendment is practiced.

Mr. Chairman, I further feel that S. 1584, as presently drawn, unnecessarily raises a constitutional question by voiding any literacy test in a State or county where the percentage of persons voting in the last election was less than 50 percent. The right to proscribe a literacy qualification is seemingly reserved to the State by article I of the Constitution, so long as that test does not discriminate on the basis of race or color so as to violate the 15th amendment.

I personally favor the abolition of literacy tests as a prerequisite to the right to vote, and originally urged the adoption of a provision outlawing all kinds of literacy tests. However, upon reflection, I believe the bill would be much less vulnerable to constitutional attack if its provisions were limited to (1) the discriminatory application of a literacy test, and (2) the substantive provisions of such a test which incorporate standards achieving de facto discrimination.

The crux of the problem here is the discriminatory application of a literacy test or similar device by a State official. The 15th amendment does not prevent the imposition by a State of a literacy test or other voting qualification reasonably adapted to legitimate ends. It only prohibits the administration of such a qualification so as to discriminate on the basis of race or color.

If a State has seen fit to adopt a literacy test or other voting qualification which is nondiscriminatory by its terms and is reasonably adapted to its legitimate purpose and historically has never been used for any purpose of discrimination, I see no reason why such a test or other qualification could not be applied by the Federal voting examiners appointed under this bill. To the best of my knowledge these tests are capable of fair and impartial administration and could be so applied by the Federal voting examiner. I believe such an approach would avoid the constitutional perils implicit in the present bill without forfeiting any of its vital goals.

Mr. Chairman, the right to vote is fundamental to our way of life. It is a tragedy that we must enact further legislation to protect that right which the Constitution guarantees to all citizens. But the fact of the matter is that violations of the 15th amendment are still widespread in some States. Many of our citizens are still being denied the right to vote because of their race or color. The 15th amendment specifically authorizes legislation to implement its provisions. Let us now move to correct a century of inequity. But let us enact a solution which is constitutional beyond any doubt, and one which meets the problem of discrimination in voting rights wherever it may occur.

The CHAIRMAN. Yes, sir.

Senator DIRKSEN. Mr. Chairman, in response to Senator Ervin, I am going to pray for myself.

The CHAIRMAN. You need prayer.

Senator ERVIN. I would like to assure the Senator from Illinois that I intend to do my praying also.

The CHAIRMAN. Proceed, Mr. Attorney General.

**STATEMENT OF HON. NICHOLAS deB. KATZENBACH, ATTORNEY
GENERAL OF THE UNITED STATES**

Attorney General KATZENBACH. Mr. Chairman, I have a prepared statement. It is quite a long statement. If the Chair would permit, I would like to read it and I may omit parts of it in the interest of getting on, but I would appreciate it if the record would contain the entire statement.

The CHAIRMAN. That will be so ordered. I will order it into the record.

Attorney General KATZENBACH. Mr. Chairman, members of the committee, I am pleased to appear here today to testify in favor of S. 1564, The Voting Rights Act of 1965. This bill represents an attempt to effectuate the most central and basic right of our political system.

Any society composed both of freemen and those who are not free cannot be a true democracy. Thus with the passage of the 15th amendment, ending slavery, this country took a giant step toward this great goal.

But until all the members of our society are afforded an effective opportunity to participate in its political processes—that is, to cast a ballot freely—the promise of democracy remains unfulfilled.

Beginning in 1956, Congress attempted to meet this problem. Since that year three Presidents have asked Congress for additional legislation to guarantee the constitutional right to vote without discrimination on account of race or color.

Three times in the last decade—in 1956, in 1960, and in 1964—those who oppose stronger Federal legislation concerning the electoral process have asked Congress to be patient; and Congress has been patient. Three times since 1956 they have said that local officials, subject to judicial direction, will solve the voting problem. And each time Congress has left the problem largely to the courts and the local officials. Three times since 1956 they have told us that the prescription would provide the entire cure—this prescription aided by time—and Congress has followed that advice.

But while the legislative process of the Congress should be deliberate, while comprehensive laws should be enacted only after all the facts are in, and while reasonable alternatives to broader Federal control of elections should, of course, be attempted first, there comes a time when the facts are all in, the alternatives have been tried and found wanting, and time has run out. We stand at that point today.

As President Johnson so simply and eloquently said in his message to the Congress last week:

Many of the issues of civil rights are complex and difficult. But about this there can be no argument. Every American citizen must have an equal right to vote. There is no reason which can excuse the denial of that right. There is no duty which weighs more heavily on us than the duty to insure that right.

Nearly 100 years ago the ratification of the 15th amendment promised Negro Americans an equal right to vote and authorized Congress

to enact legislation to carry out the promise. In the words of the late Mr. Justice Frankfurter, speaking for the Court in *Lane v. Wilson* (307 U.S. 268, 275 (1939)), the framers intended the amendment to "reach * * * contrivances by a State to thwart equality in the enjoyment of the right to vote * * * regardless of race or color." The amendment thus "nullifies sophisticated as well as simpleminded modes of discrimination," and "hits onerous procedural requirements which effectively handicap exercise of the franchise by the colored race, although the abstract right to vote may remain unrestricted as to race."

The amendment has in fact eliminated such "simpleminded"—in the Court's words—Mr. Justice Frankfurter's words—devices as the grandfather clause and the white primary, which were struck down in 1915 and 1944. But to date, the amendment has not been nearly as successful against more "sophisticated" techniques for disenfranchising Negroes. While, in theory, the amendment devitalizes these techniques, in fact, they flourish. It is now apparent that its promise is yet to be redeemed, and that Congress must meet the obligation, expressly conferred by the amendment, to enforce its provisions. The purpose of the Voting Rights Act of 1965 is to meet that obligation.

Current voter registration statistics demonstrate that comprehensive implementing legislation is essential to make the 15th amendment work.

In Alabama, the number of Negroes registered to vote has increased by only 5.2 percent between 1958 and 1964—to a total of 19.4 percent of those eligible. I am using the word "eligible" there, Mr. Chairman, in terms of literacy and age. This compares with 89.2 percent of the eligible whites.

In Mississippi, the number of Negroes registered to vote has increased even more slowly. In 1955, about 4.3 percent of the eligible Negroes were registered; today, the approximate figure is 6.4 percent. Meanwhile, in areas for which we have statistics, 80.5 percent of eligible whites are registered.

In Louisiana, Negro registration has scarcely increased at all. In 1956, 31.7 percent of the eligible Negroes were registered. As of January 1, 1965, the figure was 31.8 percent. The current white percentage is 80.2 percent.

The discouraging situation these statistics reflect exists despite the best efforts of four Attorneys General under three Presidents, Republican and Democratic. It exists largely because of the judicial process, upon which all existing remedies depend, is institutionally inadequate to deal with practices so deeply rooted in the social and political structure.

I will not burden this committee again with numerous examples of the use of tests and similar devices which measure only the race of an applicant for registration, not his literacy or anything else.

And I need not describe at length how much time it takes to obtain judicial relief against discrimination, relief which so often proves inadequate. Even after the Department of Justice obtains a judicial decree, a recalcitrant registrar's ability to invent ways to evade the court's command is all too frequently more than equal to the court's capacity to police the State registration process.

By way of example of the delays and difficulties we encounter, let me describe our experience in Dallas County, Ala., its neighboring counties, and Clarke County in Mississippi.

Mr. Chairman, my statement then goes on for some length with case histories in this respect. I think they demonstrate the difficulties of the judicial process. With your permission, I will just insert those case histories into the record.

The CHAIRMAN. The whole statement has been ordered in.

Senator ERVIN. Mr. Chairman, I hate to put an undue burden upon the Attorney General, but I have not had an opportunity to read this and I would like him to read them. I want to know what he is testifying to and I cannot examine him on it until I have had an opportunity to read it. I only saw it just a moment ago.

Attorney General KATZENBACH. I recognize that, Senator. I shall read it.

The Negroes of Dallas County, Ala., of which Selma is the seat, have been the victims of pervasive and unrelenting voter discrimination since at least 1954. Dallas County has a voting age population of approximately 29,500, of whom 14,500 are white persons and 15,000 are Negroes. In 1961, 9,195 of the whites—64 percent of the voting age total—and 156 Negroes—1 percent of the total—were registered to vote in Dallas County. An investigation by the Department of Justice substantiated the discriminatory practices that these statistics, without more, made obvious.

As a consequence, the first voter discrimination case of the Kennedy-Johnson administration was brought against the Dallas County Board of Registrars on April 13, 1961. When the case finally came to trial 13 months later, we proved discrimination by prior registrars. It was shown, for example, that exactly 14 Negroes had been registered between 1954 and 1960. For whites, registration had been a simple corollary of citizenship. But the court found that the board of registrars then in office was not discriminating and refused to issue an injunction against discrimination.

We appealed. On September 30, 1963, 2½ years after the suit was originally filed, the court of appeals reversed the district court and ordered it to enter an injunction against discriminatory practices. The Department of Justice also had urged the court of appeals to hold that Negro applicants must be judged by standards no different than the lenient ones that had been applied to white applicants during the long period of discrimination—so that the effects of past discrimination would be dissipated.

Our experience has shown that such relief is essential to any meaningful improvement in Negro voter registration in areas where there has been systematic and persistent discrimination. The Court of Appeals for the Fifth Circuit has adopted this view in recent cases, but declined to order this relief in the first *Dallas County* case. Thus, after 2½ years, the first round of litigation against discrimination in Selma ended substantially in failure.

Two months later, Department personnel inspected and photographed voter registration records at the Dallas County Courthouse. These records showed that the same registrars whom the district court had earlier given a clean bill of health were engaging in blatant discrimination. With a top heavy majority of whites already registered standards for applicants of both races had been raised. The percentage of rejections both for white and Negro applicants for registration had more than doubled since the trial in May 1962.

The impact, of course, was greatest on the Negroes, of whom only a handful were registered. Eighty-nine percent of the Negro applications had been rejected between May 1962 and November 1963.

Of the 445 Negro applications rejected, 175 had been filed by Negroes with at least 12 years of education, including 21 with 16 years and 1 with a master's degree.

In addition to discriminatory grading practices, the registrars also were using one of their most effective indirect methods—delay. Under Alabama law, the registrars meet and process applications on a limited number of days each year. Processing of applications was slowed to a snail's pace. In October 1963, when most of the applicants were Negroes, the average number of persons allowed to fill out forms each registration day was about one-fourth the average in previous years, when most of the applicants were white.

For Negroes to register in Dallas County was thus extremely difficult. In February 1964, it became virtually impossible. Then all Alabama county boards of registers, including the Dallas County board in Selma, began using a new application form which included a complicated literacy and knowledge-of-government test.

Since registration is permanent in Alabama, the great majority of white voters in Selma and Dallas County, already registered under easier standards, did not have to pass the test. But the great majority of voting age Negroes, unregistered, now faced a still higher obstacle to voting.

Under the new test, the applicant had to demonstrate his ability to spell and understand by writing individual words from the dictation of the registrar. Applicants in Selma were required to spell such difficult and technical words as "emolument," "capitation," "impeachment," "apportionment," and "despotism." The Dallas County registrars also added a refinement not required by the terms of the State-prescribed form. Applicants were required to give a satisfactory interpretation of one of the excerpts of the Constitution printed on the form.

We decided to go back to court. In March 1964, we filed a motion in the original *Dallas County* case initiating a second full-scale attempt to end discriminatory practices in the registration process in that county.

In September 1964, pending trial of this second proceeding, Alabama registrars, including those in Dallas County, began using another, still more difficult test.

In October 1964, our reopened case came on for trial. We proved that between May 1962, the date of the first trial, and August 1964, 795 Negroes had applied for registration but that only 98 were accepted. During the same period, 1,232 white persons applied for registration, of whom 945 were registered. Thus, less than 12 percent of the Negro applicants but more than 75 percent of the white applicants were accepted.

On February 4, 1965, nearly 4 years after we first brought suit, the district court entered a second decree. This time, the court substantially accepted our contentions and the relief requested by the Department was granted. The court enjoined use of the complicated literacy and knowledge-of-government tests and entered orders designed to deal with the serious problem of delay.

We hope this most recent decree will be effective, but the Negroes of Dallas County have good reason to be skeptical. After 4 years of litigation, only 383 Negroes are registered to vote in Dallas County today. The Selma-to-Montgomery march demonstrates that, understandably, the Negroes are tired of waiting.

The story of Selma illustrates a good deal more than discrimination by voting registrars and delays of litigation. It also illustrates another obstacle, sometimes more subtle, certainly more damaging. I am talking about fear.

The Department has filed a series of suits against intimidation of Negro registration applicants by Sheriff James Clark, by his deputies, and by the Dallas County White Citizens Council. These cases involved intimidation, physical violence and baseless arrests and prosecutions. Our appeals against adverse decisions in the first two such cases will be argued tomorrow in the court of appeals.

The story of the areas adjacent to Selma is very similar. East of Selma, in Lowndes County, only one Negro is registered—and he was put on the rolls only last week. Fifteen other Negro applicants were recently rejected.

South of Selma, in Wilcox County, there were no Negroes registered to vote until a few weeks ago, when a token number were registered. Twenty-nine Negroes applied for registration in 1963. All were rejected. The Department filed a lawsuit on July 19, 1963. On March 31, 1964, the district court entered its decision, finding that the Negro applicants had been rejected "mainly due to their failure to obtain the signature of a qualified voter in Wilcox County to vouch for them * * *." Unfortunately, the court went on to rule that the voucher requirement was neither "discriminatory nor oppressive as to the Negro applicants"—this in a county where no Negroes were registered. Our appeal was argued last Friday.

Our experiences in Mississippi parallel those in Alabama. On July 6, 1961, the Department filed a complaint seeking an injunction against discriminatory registration practices by the registrar of Clarke County, Miss. At that time 76 percent of eligible whites were registered, but not one Negro out of a voting-age population of 2,998 persons.

A year and a half later, on December 26, 1962, the trial began. It was a quick trial and was concluded 2 days later. The Government's evidence showed that several highly qualified Negroes, including a school principal, had been denied registration, while illiterate and semilliterate whites had been registered. Negro applicants were sent home to "think" over their applications. White applicants merely had to "sign the book" for themselves and their spouses without any test whatsoever.

On February 5, 1963, the district court rendered judgment for the Government, finding discrimination against Negroes and massive irregularities in the registration of white persons. An injunction was granted. However, the court found that discrimination had not occurred pursuant to a "pattern or practice," a finding which precluded the use of the voting referee provisions of the 1960 Civil Rights Act. The court also refused to require the registration of Negroes whose qualifications were equal to those of whites who had been registered.

The effectiveness of the relief the district court granted can be illustrated by the fact that by August 4, 1964, the percentage of Negroes registered had risen from zero percent of the voting-age population to 2.2 percent—that is, in about 3 years, 64 Negroes were registered.

Following the Government's appeal, the court of appeals rendered its opinion on February 20, 1964, a year after the district court decision. While the court of appeals modified the judgment below in minor respects, it expressly approved the denial of equalization relief. On petition for rehearing, however, the court of appeals modified its prior determination to the extent of holding that the trial court's refusal to find a "pattern or practice" of discrimination was "clearly erroneous" and in the light of that holding remanded the case to the district court.

On December 1, 1964, 3½ years from the start of this action, the district court amended its order, not to find that there had been a pattern or practice of discrimination, but to withdraw its previous ruling on the point and to make no finding at all. The judge again denied equalization relief. The second appeal in this case has followed, nearly 4 years after the suit was brought.

All the cases I have discussed thus far have been aimed at discrimination in voting on the county level. The Department has also brought suits designed to bar use of illegal tests and devices State-wide. To date, these suits have produced mixed results.

On August 28, 1962, the Department filed a lawsuit against the State of Mississippi, its State board of elections, and six county registrars, broadly challenging the validity of a bundle of the State's voter registration laws, including the interpretation test. Nineteen months later, a three-judge district court, one judge dissenting, dismissed the complaint in its entirety. Two weeks ago this decision was reversed in its entirety by the Supreme Court, which remarked that the basis for the lower court's decision on one crucial point was "difficult to take seriously." However, 31 months after filing the complaint no trial on the merits has yet been held, and it is difficult to predict how much more time will pass before relief is obtained.

The situation in Louisiana is also discouraging. The Supreme Court recently affirmed the decision of the three-judge Federal district court in *United States v. Louisiana* which held that Louisiana's "constitutional interpretation" test is invalid and, in addition, enjoined the use of Louisiana's recently adopted "citizenship test" in 21 parishes where discrimination has been practiced. But other techniques of discrimination remain available, and much of the force of this decree may be largely dissipated if State and parish officials decide to conduct a reregistration.

One example of the techniques still employed in Louisiana cropped up in East and West Feliciana Parishes. These registrars were among those enjoined in *United States v. Louisiana* from using certain State-prescribed tests. Contending that they would be subject to prosecution by the State for not applying Louisiana law, a manifestly untenable position under the supremacy clause of the Federal Constitution, they responded with their ultimate weapon by closing up shop altogether. We asked a single district judge, who had been a dissenting member of the panel which enjoined use of the tests, to

order the registrars to resume registration. This judge agreed with the registrars. We appealed immediately and obtained a temporary injunction pending appeal. But meanwhile the rolls had been frozen for over 6 months.

These examples—and they are but a few of a very large number of similar instances—compel the judgment that existing law is inadequate. Litigation on a case-by-case basis simply cannot do the job. Preparation of a case is extraordinarily time consuming because the relevant data—for example, the race of individuals who have actually registered—is frequently most difficult to obtain. Many cases have to be appealed. In almost any other field, once the basic law is enacted by Congress and its constitutionality is upheld, those subject to it, accept it. In this field, however, the battle must be fought again and again in county after county. And even in those jurisdictions where judgment is finally won, local officials intent upon evading the spirit of the law are adept at devising new discriminatory techniques not covered by the letter of the judgment.

In sum, the old means of grappling with the denial of 15th amendment rights have failed. We must try a new approach and new techniques.

S. 1564 is the administration's answer to the call for new methods. In the place of fruitless legal maneuvering, the bill offers a workable administrative solution and will hasten the day when the basic right of our democracy, the right to vote, is secure against practices of discrimination and inequality.

This bill applies to every kind of election, Federal, State and local, including primaries. It is designed to deal with the two principal means of frustrating the 15th amendment: the use of onerous, vague, unfair tests and devices enacted for the purpose of disenfranchising Negroes, and the discriminatory administration of these and other kinds of registration requirements.

The bill accomplishes its objectives first, by outlawing the use of these tests under certain circumstances, and second, by providing for registration by Federal officials where necessary to insure the fair administration of the registration system.

The tests and devices with which the bill deals include the usual literacy, understanding, and interpretation tests that are easily susceptible to manipulation, as well as a variety of other repressive schemes. Experience demonstrates that the coincidence of such schemes and low electoral registration or participation is usually the result of racial discrimination in the administration of the election process. Hence, section 3(a) of the bill provides for a determination by the Attorney General whether any State, or subdivision thereof separately considered, has on November 1, 1964, maintained a test or device as a qualification to vote.

In addition, the Director of the Census determines whether, in the States or subdivisions where the Attorney General ascertains that tests or devices have been used, less than 50 percent of the residents of voting age were registered on November 1, 1964, or less than 50 percent of such persons voted in the presidential election of November 1964.

The bill provides that whenever positive determinations have been made by the Attorney General and the Director of the Census as to a State, as a whole, or separately as to any subdivision not located in

such a State, no person shall be denied the right to vote in any election in such State or separate subdivision because of his failure to comply with a test or device. Inclusion of a separate subdivision of a State which is not totally subject to section 3(a) does not, of course, bring the whole State within the section.

I shall present at the end of my discussion of the bill the information we have as to the areas to be affected by determinations under section 3(a).

The prohibition against tests may be ended in an affected area after it has been free of racial discrimination in the election process for 10 years, as found, upon its petition, by a three-judge court in the District of Columbia. This finding will also terminate the examiner procedure provided for in the bill.

However, the court may not make such a finding as to any State or subdivision for 10 years after the entry of a final judgment, whether entered before or after passage of the bill, determining that denials of the right to vote by reason of race or color have occurred anywhere within such State or subdivision.

Because it is now beyond question that recalcitrance and intransigence on the part of State and local officials can defeat the operation of the most unequivocal civil rights legislation, the bill, in section 4, provides for the appointment of examiners by the Civil Service Commission to carry out registration functions in a political subdivision in which the tests have been suspended pursuant to section 3(a).

The suspension of tests would not automatically result in the appointment of examiners. For that to happen the Attorney General must certify to the Civil Service Commission under section 4(a) either (1) that he has received 20 or more meritorious complaints from the residents of a subdivision affected by the determination referred to in section 3(a) alleging denial of the right to vote on account of race or color, or (2) that in his judgment the appointment of examiners is necessary to enforce the guarantees of the 15th amendment in such a political subdivision. Of course, one (but not the only) situation that would fall within section 4(a)(2) would be the continued use of tests and devices by a local registrar after section 3(a) takes effect.

It can be readily seen that the bill places a premium on compliance with section 3(a) and the adoption by State registrars of fair procedures. All that State registration officials need do to avoid the appointment of examiners is to comply with section 3(a) and not discriminate against Negroes.

After the certification by the Attorney General, the Commission is required to appoint as many examiners as necessary to examine applicants in such area concerning their qualifications to vote. Any person found qualified to vote is to be placed on a list of eligible voters for transmittal to the appropriate local election officials.

Any person whose name appears on the list must be allowed to vote in any subsequent election until such officials are notified that he has been removed from the list as the result of a successful challenge, a failure to vote for 3 consecutive years, or some other legal ground for loss of eligibility to vote.

The bill provides a procedure for the challenge of persons listed by the examiners, including a hearing by an independent hearing offi-

cer and judicial review. A challenged person would be allowed to vote pending final action on the challenge.

The times, places, and procedures for application and listing, and for removal from the eligibility list, are to be prescribed by the Civil Service Commission. The Commission, after consultation with the Attorney General, will instruct examiners as to the qualifications applicants must possess. The principal qualifications will be age, citizenship, and residence, and obviously will not include those suspended by the operation of section 3.

If the State imposes a poll tax as a qualification for voting, the Federal examiner is to accept payment and remit it to the appropriate State official. State requirements for payment of cumulative poll taxes for previous years would not be recognized.

Civil injunctive remedies and criminal penalties are specified for violation of various provisions of the bill. Among these provisions is one requiring that no person, whether a State official or otherwise, shall fail or refuse to permit a person whose name appears on the examiner's list to vote, or refuse to count his ballot, or intimidate, threaten, or coerce, a person for voting or attempting to vote under the act.

An individual who violates this or other prohibitions of the bill may be fined up to \$5,000 or imprisoned up to 5 years, or both.

It should be noted also that a person harmed by such acts of intimidation by State officials may also sue for damages under 42 U.S.C. 1983, a statute which was enacted in 1871. That statute provides for private civil suits against State officers who subject persons to deprivation of any rights, privileges, and immunities secured by the Constitution and laws of the United States. Private individuals who act in concert with State officers could also be sued for damages under that statute, *Baldwin v. Morgan* (251 F. 2d 780 (C.A. 5, 1958)).

In our view, section 7 of the bill, which prohibits intimidation of persons voting or attempting to vote under the bill represents a substantial improvement over 42 U.S.C. 1971(b), which now prohibits voting intimidation. Under section 7 no subjective "purpose" need be shown, in either civil or criminal proceedings, in order to prove intimidation under the proposed bill. Rather, defendants would be deemed to intend the natural consequences of their acts. This variance from the language of section 1971(b) is intended to avoid the imposition on the Government of the very onerous burden of proof of "purpose" which some district courts have—wrongfully, I believe—required under the present law.

The bill provides that a person on an eligibility list may allege to an examiner within 24 hours after closing of the polls in an election that he was not permitted to vote, or that his vote was not counted. The examiner, if he believes the allegation well founded, would notify the U.S. attorney, who may apply to the district court for an order enjoining certification of the results of the election:

The court would be required to issue such an order pending a hearing. If it finds the charge to be true, the court would provide for the casting or counting of ballots and require their inclusion in the total vote before any candidate may be deemed elected.

The examiner procedure would be terminated in any subdivision whenever the Attorney General notifies the Civil Service Commission

that all persons listed have been placed on the subdivision's registration rolls and that there is no longer reasonable cause to believe that persons will be denied the right to vote in such subdivision on account of race or color.

The bill also contains a provision dealing with the problem of attempts by States within its scope to change present voting qualifications. No State or subdivision for which determinations have been made under section 3(a) will be able to enforce any law imposing qualifications or procedures for voting different from those in force on November 1, 1964, until it obtains a declaratory judgment in the District Court for the District of Columbia that such qualifications or procedures will not have the effect of denying or abridging rights guaranteed by the 15th amendment.

I turn now to the information we have regarding the impact of section 3(a). Tests and devices would—according to our best present information—be prohibited in Louisiana, Mississippi, Alabama, Georgia, South Carolina, Virginia, and Alaska, 34 counties in North Carolina, and 1 county in Arizona, 1 in Maine, and 1 in Idaho. Elsewhere, the tests and devices would remain valid, and similarly the registration system would remain exclusively in the control of State officials.

The premise of section 3(a), as I have said, is that the coincidence of low electoral participation and the use of tests and devices results from racial discrimination in the administration of the tests and devices. That this premise is generally valid is demonstrated by the fact that of the six Southern States in which tests and devices would be banned statewide by section 3(a), voting discrimination has unquestionably been widespread in all but South Carolina and Virginia, and other forms of racial discrimination, suggestive of voting discrimination, are general in both of those States.

The latter suggestion applies as well to North Carolina, where 34 counties are reached by section 3(a) and where, indeed, in at least one instance a Federal court has acted to correct registration practices which impeded Negro registration.

In view of the premise for section 3(a), Congress may give sufficient territorial scope to the section to provide a workable and objective system for the enforcement of the 15th amendment where it is being violated. Those jurisdictions placed within its scope which have not engaged in violations of the 15th amendment—the States and counties affected by the formula in which it may be doubted that racial discrimination has been practiced—need only demonstrate in court that they have not practiced discrimination within the 10 immediately preceding years in order to lift the ban of section 3(a) from their registration systems.

That is, section 3(a) in reality reaches on a long-term basis only those areas where racial discrimination in voting in fact exists. In its 1st section, the 15th amendment explicitly provides, without equivocation, that "the right to vote shall not be denied or abridged . . . by any State on account of race or color." And its second section is no less straightforward in declaring that "the Congress shall have power to enforce this article by appropriate legislation." The sole question, then, is whether the means embodied in this bill are appropriate or as Chief Justice Marshall put it, "plainly adapted to that end."

There is no question but that this bill was adapted to the end of eliminating racial discrimination in voting.

Senator HEUSKA. Would the witness yield?

I cannot follow him on the manuscript I have. This is material apparently which is extemporaneous to my copy of the statement.

Attorney General KATZENBACH. There is in the statement a quite long section on constitutionality of the bill and I was simply summarizing that in a couple of paragraphs.

My statement has already gone a long time.

The CHAIRMAN. That manuscript there is not part of what you are reading?

Attorney General KATZENBACH. Yes; I am sorry, I was unaware of that and I realize that I had asked them to prepare a summary of that and I was reading from that.

The CHAIRMAN. Will you make copies available to the committee?

Attorney General KATZENBACH. It is just two paragraphs and it summarizes that.

Senator ERVIN. Mr. Chairman, this is one of the most important questions in this bill. I do not like to tell the Attorney General how to perform his duty, but I think this committee can bear some elaboration and elucidation on this point. I would be glad to lend the Attorney General my copy of this.

Attorney General KATZENBACH. I have a copy of the whole thing and I will read it, Mr. Chairman.

Senator JAVITS. Mr. Chairman, a parliamentary inquiry: Is the witness compelled to testify to what he issues in an advance statement, or can he testify as he chooses?

The CHAIRMAN. Frankly, under the rules—we do not have a strict interpretation, but he is supposed to file a statement a day in advance. Of course, any member of the committee can go further than the statement in examining the witness. But we have never enforced that rule.

Senator JAVITS. I thank the Chair.

The CHAIRMAN. Senator Ervin has objected and wants him to read the entire statement. He is well within his rights.

Senator ERVIN. Mr. Chairman, the reason for that, I think the bill is unconstitutional in certain respects and I want to give the Attorney General a chance to relieve my mind of that false impression if he can do so.

Attorney General KATZENBACH. I appreciate that opportunity. Let me try, Senator.

Mr. Chairman, I will go to the text.

The CHAIRMAN. I do not understand yet. Were you skipping from place to place or did you have a memorandum there which we do not have? Which is correct?

Attorney General KATZENBACH. What I have here, Mr. Chairman, is a two-paragraph summary of the section which appears in the statement entitled "Constitutionality."

The CHAIRMAN. But Senator Ervin has requested that you read the statement and I think that is what should be done.

Attorney General KATZENBACH. I apologize, Mr. Chairman. I will do that.

I have shown why this legislation is necessary and have explained how it would work. It remains to explain why we think it is constitutional.

Far from impinging on constitutional rights—in purpose and effect, the bill implements the explicit command of the 15th amendment that—

Senator ERVIN. What page is that on?

Attorney General KATZENBACH. Page 12. [Continues reading:]

The right * * * to vote shall not be denied or abridged * * * by any State on account of race [or] color.

The means chosen to achieve that end are appropriate, indeed, necessary. Nothing more is required.

Let me pursue the matter a little. This is not a case where the Congress would be invoking some "inherent," but unexpressed, power. The Constitution itself expressly says in section 2 of the 15th article of amendment:

The Congress shall have power to enforce this article by appropriate legislation.

Here, then, we draw on one of the powers expressly delegated by the people and by the States to the National Legislature. In this instance, it is the power to eradicate color discrimination affecting the right to vote. Accordingly, as Chief Justice Marshall said in *Gibbons v. Ogden* (9 Wheat. 1, 196), with respect to another express power—the power to regulate interstate commerce—

[T]his power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the Constitution.

That was the constitutional rule in 1824 when those words were first spoken by Chief Justice Marshall. It remains the constitutional rule today; those same words were repeated by Mr. Justice Clark for a unanimous Court just recently in sustaining the public accommodation provisions of the Civil Rights Act of 1964. See *Atlanta Motel v. United States* (379 U.S. 241, 255).

This is not a case where the subject matter has been exclusively reserved to another branch of Government—to the executive or the courts. The 15th amendment leaves no doubt about the propriety of legislative action. And, of course, both immediately after the passage of the 15th amendment, and more recently, the Congress has acted to implement the right. See the very comprehensive act of May 31, 1870 (16 Stat. 140), and the voting provisions of the Civil Rights Act of 1957, 1960, and 1964.

Some of the early laws were voided as too broad and others were later repealed. But the Supreme Court has never voided a statute limited to enforcement of the 15th amendment's prohibition against discrimination in voting. On the contrary, in the old cases of *United States v. Reese* (92 U.S. 214, 218) and *James v. Bowman* (190 U.S. 127, 138-139), the Supreme Court, while invalidating certain statutory provisions, expressly pointed to the power of Congress to protect the right to "exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude. This, under the express provisions of the second section of the amendment, Congress may enforce by 'appropriate legislation.'"

And with respect to congressional elections, shortly after the adoption of the 15th amendment, the Court sustained a system of Federal supervisors for registration and voting not dissimilar to the system proposed here. See *Ex parte Siebold* (100 U.S. 371), *United States*

v. Gale (100 U.S. 65). Constitutional assaults on the more recent legislation have been uniformly rejected. See *United States v. Raines* (362 U.S. 17 (1957 act)); *United States v. Thomas* (362 U.S. 58 (same)); *Hannah v. Laroche* (368 U.S. 420 (Civil Rights Commission rules under 1957 act)); *Alabama v. United States* (371 U.S. 37 (1960 act)); *United States v. Mississippi* (No. 73, this term, decided Mar. 8, 1965 (same)); *Louisiana v. United States* (No. 67, this term, decided Mar. 8, 1965 (same)).

This legislation has only one aim—to effectuate at long last the promise of the 15th amendment—that there shall be no discrimination on account of race or color with respect to the right to vote. That is the only purpose of the proposed bill. It is therefore, truly legislation “designed to enforce” the amendment. To meet the test of constitutionality, it remains only to demonstrate that the means suggested are appropriate.

The relevant constitutional rule, again, was established once and for all by Chief Justice Marshall. Speaking for the Court in *McCulloch v. Maryland* (4 Wheat. 316, 421), he said:

Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional.

The same rule applies to the powers conferred by the amendments to the Constitution. In the case of *Ex parte Virginia* (100 U.S. 339, 345-346), speaking of the 13th and 14th amendments, the Court said:

Whatever legislation is appropriate, that is, adapted to carry out the objects the amendments have in view, whatever tends to enforce submission to the prohibitions they contain, and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against State denial or invasion, if not prohibited, is brought within the domain of congressional power.

See also, *Everard's Breweries v. Day* (265 U.S. 545, 558-559), applying the same standard to the enforcement section of the prohibition (18th) amendment.

That is really the end of the matter. The means chosen are certainly not “prohibited” by the Constitution (as I shall show in a moment) and they are—as I have already outlined—“appropriate” and “plainly adapted” to the end of eliminating racial discrimination in voting. It does not matter, constitutionally, that the same result might be achieved in some other way. That has been settled since the beginning and was expressly reaffirmed very recently in the cases upholding the Civil Rights Act of 1964. See *Atlanta Motel v. United States* (379 U.S. 241, 261).

All workable legislation tends to set up categories—inevitably so. I have explained the premise for the classification made and, with some possible exceptions, as I have said, the facts support the hypothesis.

But the exceptional case is provided for in section 3(c) of the bill which I have already discussed. Given a valid factual premise—as we have here—it is for Congress to set the boundaries. That is essentially a legislative function which the courts do not and cannot quibble about. Compare *Boydton v. Virginia* (364 U.S. 454), *Currin v. Wallace* (306 U.S. 1), *United States v. Darby* (312 U.S. 100, 121). See, also, *Purity Extract Co. v. Lynch* (226 U.S. 192).

The President submits the present proposal only because he deems it imperative to deal in this way with the invidious discrimination that persists despite determined efforts to eradicate the evil by other means. It is only after long experience with lesser means and a discouraging record of obstruction and delay that we resort to more far-reaching solutions.

The Constitution, however, does not even require this much forbearance. When there is clear legislative power to act, the remedy chosen need not be absolutely necessary; it is enough if it be "appropriate." And I am certain that you all recall that the Supreme Court—in sustaining the finding of the 88th Congress that racial discrimination by a local restaurant serving a substantial amount of out-of-State food adversely affects interstate commerce—made it clear that so long as there is a "rational basis" for the congressional finding, the finding itself need not be formally embodied in the statute (*Katsenbach v. McClung* (379 U.S. 294, 303-305)).

I turn now to the contention often heard that, whatever the power of Congress under the enforcement clause of the 15th amendment in other respects, it can never be used to infringe on the right of the States to fix qualifications for voting, at least for non-Federal elections. The short answer to this argument was given most emphatically by the late Mr. Justice Frankfurter, speaking for the Court in *Gomillion v. Lightfoot* (364 U.S. 339, 347), a 15th amendment case:

When a State exercises power wholly within the domain of State interest, it is insulated from Federal judicial review. But such insulation is not carried over when State power is used as an instrument for circumventing a federally protected right.

The constitutional rule is clear: So long as State laws or practices erecting voting qualifications for non-Federal elections do not run afoul of the 14th or 15th amendments, they stand undisturbed. But when State power is abused—as it plainly is in the areas affected by the present bill—there is no magic in the words "voting qualification."

The "grandfather clauses" of Oklahoma and Maryland were, of course, voting qualifications. Yet they had to bow before the 15th amendment (*Guinn v. United States* (238 U.S. 347), *Myers v. Anderson* (238 U.S. 368)). Nor are only the most obvious devices reached. As the Court said in *Lane v. Wilson* (307 U.S. 268, 275):

The amendment nullifies sophisticated as well as simple-minded modes of discrimination.

Nor do literacy tests and similar requirements enjoy special immunity. To be sure, in *Lassiter v. Northampton Election Board* (360 U.S. 45), the Court found no fault with a literacy requirement, as such, but it added:

Of course, a literacy test, fair on its face, may be employed to perpetuate that discrimination which the 15th amendment was designed to uproot (id., 53. See also, *Gray v. Sanders* (372 U.S. 368, 379)).

Indeed, as the opinion in *Lassiter* noted, the Court had earlier affirmed a decision annulling Alabama's literacy test on the ground that it was "merely a device to make racial discrimination easy" (360 U.S. at 53). See *Davis v. Schnell* (386 U.S. 933, affirming 81 F. Supp. 872). And, only the other day, the Supreme Court voided one of Louisiana's literacy tests (*Louisiana v. United States* (No. 67, this

term, decided Mar. 8, 1965); see, also, *United States v. Mississippi, supra*)).

Thus, it is clear that the Constitution will not allow racially discriminatory voting practices to stand. But it is even clearer, as we have seen, that the Constitution invites Congress to do more than stand by and watch the courts invalidate State practices. It invites Congress to take a positive role by outlawing the use of any practices utilized to deny rights under the 15th amendment.

This bill accepts that invitation.

I understand that it has been suggested that, whether or not the bill is constitutional, a better remedy for existing discrimination would be to guarantee the fair administration of literacy tests rather than to abolish them. I do not think this is so.

The majority of the States—at least 30—find it impossible to conduct their elections without any literacy test whatever. There is no evidence that these States have governments inferior to the States which impose—or purport to impose—such a requirement.

Whether there is really a valid basis for the use of literacy tests is, therefore, questionable. But it is not for this reason that the proposed legislation would abolish them in certain places.

Rather, we seek to abolish these tests because they have been used in those places as a device to discriminate against Negroes.

Highly literate Negroes have been refused the right to vote while totally illiterate whites have voted freely. In short, in these areas, passing a literacy test is a matter of color, not intellectual capability.

It is not this bill—it is not the Federal Government—which undertakes to eliminate literacy as a requirement for voting in such States or counties. It is the States or counties themselves which have done so, and done so repeatedly, by registering illiterate or barely literate white persons.

The aim of this bill is to insure that the areas which have done so apply the same standard to all persons equally, to Negroes now just as to whites in the past.

It might be suggested that this kind of discrimination could be ended in a different way—by wiping the registration books clean and requiring all voters, white or Negro, to register anew under a uniformly applied literacy test.

For two reasons such an approach would not solve, but would compound our present problems.

To subject every citizen to a higher literacy standard would, inevitably, work unfairly against Negroes—Negroes who have for decades been systematically denied educational opportunity equal to that available to the white population. Although the discredited “separate but equal” doctrine had colorable constitutional legitimacy until 1954, the notorious and tragic fact is that educational opportunities were pathetically inferior for thousands of Negroes who want to vote today.

The impact of a general reregistration would produce a real irony. Years of violation of the 14th amendment, right of equal protection through equal education, would become the excuse for continuing violation of the 15th amendment, right to vote.

The second argument against such a reregistration solution is even more basic, and even more ironic. Even the fair administration of a new literacy test in the relevant areas would, inevitably, disenfran-

chise not only many Negroes, but also thousands of illiterate whites who have voted throughout their adult lives.

Our concern today is to enlarge representative government, to solicit the consent of all the governed. Surely we cannot even purport to act on that concern if, in so doing, we reduce the ballot and correspondingly diminish democracy.

S. 1564 would effectuate our commitment to the ideals of effective democracy expressed by the President when he addressed Congress last week.

Numerous Members of the Senate and House of Representatives have worked hard to produce this bill and it is most encouraging to know that 66 Senators from 37 States have joined in sponsoring it.

This dedication of the President and Members of Congress reflects the Nation's firm belief that racial discrimination and democracy are incompatible. The Voting Rights Act of 1965 must, therefore, be enacted.

I urge that it be enacted promptly.

Thank you, Mr. Chairman; I apologize for the length of the statement.

The CHAIRMAN. Senator Ervin?

Senator ERVIN. Speaking to the objectives of the sponsors of this bill, do you think that if the objective is to abolish literacy tests and permit those who cannot read and write to participate in our Government, then they should propose a constitutional amendment which would accomplish that result.

Attorney General KATZENBACH. Senator Ervin, it would be possible to abolish all literacy tests by constitutional amendment. But the objective of this bill is not the accumulation of all literacy tests. The objective of this bill is to prevent their use in contravening the 15th amendment for purposes of discrimination. I would think it is a separate question whether Congress wanted to abolish literacy tests in all States where they had been fairly administered.

Senator ERVIN. Well, there is little doubt about the authority of Congress and the States to amend the Constitution and abolish the literacy tests, is there?

Attorney General KATZENBACH. No; of course, a literacy test adopted in accordance with the Constitution becomes the law of the land.

Senator ERVIN. I was very much struck by your citation of *McCulloch v. Maryland*, which, of course, is one of the greatest cases in constitutional law, which you cite on page 14, which says:

Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional.

Now, do you not agree with me that if there is any provision of the Constitution which prohibits the enactment of a bill of this kind into law, that provision in the Constitution will prevail?

Attorney General KATZENBACH. I know of no provision which prohibits that in the Constitution.

Senator ERVIN. Read my question. I want to see if you gave a responsive answer?

The CHAIRMAN. Read the question.

(The question was read by the reporter.)

Attorney General KATZENBACH. Yes; but I know of no provision in the Constitution which prohibits it.

Senator ERVIN. I also noticed your reference to *United States v. Reese*, which is reported in 92 U.S. 214, 218. I think that *United States v. Reese* points out one of the most effective provisions of this bill. In *United States v. Reese* the Supreme Court struck down some acts of Congress which were passed to regulate elections among other things. The Court said this:

In view of all these facts, we feel compelled to say that in our opinion, the language of the third and fourth sections does not confine their operation to unlawful discrimination on account of race.

Now, do you not agree with me that a provision of the law which professedly operates to permit violations of the 15th amendment, and which has no relationship to matters of race, is not constitutional?

Attorney General KATZENBACH. If it has no relationship, I would think it is not constitutional.

Senator ERVIN. The prohibition of right to vote on the basis of race?

Attorney General KATZENBACH. Yes, Senator.

Senator ERVIN. I wish to call your attention to section 3(a):

No person shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device, in any State or in any political subdivision of a State which (1) the Attorney General determines maintained on November 1, 1964, any test or device as a qualification for voting, and with respect to which (2) the Director of the Census determines that less than 50 percentum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 percentum of such persons voted in the presidential election of 1964.

That provision of that statute has no reference whatever to any denial or abridgment of the right to vote on account of race, color, creed or condition of servitude, which was the foundation of the 15th amendment.

Attorney General KATZENBACH. Of course, Senator, it does not say that. I think the purpose of the legislation, as I attempted to state in my testimony, was that there was a relationship between those statistics and denials of the 15th amendment right, and they could be demonstrated by those objective tests. That would be the basis for Congress enacting this, that there was a direct relationship. If that net was too broad, then the procedure of section (c) of section 3 is available to remove a State from that.

There, in section 3(c), it indicates once again that the relationship is directly a relationship to the 15th amendment.

Senator ERVIN. I am coming to section 3 a little later, or rather, section (c), which certainly is going to shut the courthouse doors of every courthouse in the United States except those of the District of Columbia.

I will come to that a little later, but I wish you would point out, would not sections 3 (a) and (b) invalidate the use of any literacy test in any county in any State if less than 50 percent of the persons voting, of voting age, residing therein, were registered on November 1, 1964, or less than 50 percent of such persons voted in the presidential election of November 1964, irrespective of whether there was any discrimination or registering or voting on the basis of race?

Attorney General KATZENBACH. Yes.

Senator ERVIN. So it has no relation. Here is a bill which has been introduced by 67 Senators, and the prospects are that it may be enacted into law, which will go into effect and abolish literacy tests, however simple, in any State where either one of these alternative conditions apply. And application is not dependent in any degree on the matter of discrimination or abridgment of right to vote on the basis of race.

Attorney General KATZENBACH. Senator, perhaps I did not make myself clear before. That test which is adopted here is related to the finding, the testimony that I made, and I think the testimony that others would give, that these statistics are indicative of a probability of racial discrimination within those areas in violation of the 15th amendment. Therefore, it is directly related to the 15th amendment, even though the words "the 15th amendment" are not used in section 3(a).

That is made even more clear by the fact that under section 3(c) a State which has not discriminated, which can so establish, can be removed from its prohibitions.

So, I think the record should be very clear, Senator, that this is directly related to the 15th amendment. It is not correct, in my judgment, to state that it is not.

Senator ERVIN. Let us test it and see whether that is true.

Under this 3(a), under the second alternative; that is, the alternative that it is applied where less than 50 percent of the persons of voting age residing in a State or political subdivision failed to vote in the presidential election of November 1964. I ask you that if 100 percent of all the people of voting age may have been registered under that second clause, if less than 50 percent of the people of voting age fail to vote, this section 3(a) would apply, would it not?

Attorney General KATZENBACH. Yes; it would. I believe your example is hypothetical. The examples I gave in my testimony are actual.

Senator ERVIN. Well, I am not certain. You have some North Carolina counties in here that, I think, in your position are hypothetical, if you will pardon me for saying it.

So, even if a State or a political subdivision of a State practiced no discrimination whatever in the administration of the literacy test, it could be denied the power to exercise its constitutional privilege to prescribe a literacy test if less than 50 percent of its voters came out to vote in the presidential election of November 1964?

Attorney General KATZENBACH. No, Senator, not if they were willing to expend the energy to establish that in court.

Senator ERVIN. Not if they were willing—they could not establish that innocence of wrongdoing in any court sitting in a State, could they?

Attorney General KATZENBACH. No, Senator, not under this bill.

Senator ERVIN. And if they wanted to establish that innocence of discrimination in violation of the 15th amendment, they would have to come up here to the District of Columbia, would they not?

Attorney General KATZENBACH. That is correct, Senator.

Senator ERVIN. And I ask you if you do not know that they would not have the compulsory power to subpoena the witnesses up here, even

if they had the resources to drag those witnesses 500 or even 800 miles to come here.

Attorney General KATZENBACH. I believe the subpoena power runs outside the District.

Senator ERVIN. Just to persist in the matter, I invite your attention to rule 45, subsection E, entitled "Subpena for Hearing or Trial";

A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the District or any place within the District, that is within 100 miles of the place of hearing or trial specified in the subpoena. And when a statute of the United States provides, therefore, the court upon proper application for cause shown may authorize the service of a subpoena in any other place.

I ask you the question whether there is any statute that would authorize Beaufort County, N.C., if it said was innocent of any discrimination under this bill, if there is any statute which would enable it by compulsory process to get its witnesses up here into the District of Columbia?

Attorney General KATZENBACH. No, Senator. May I add a word on that?

One could, of course, take depositions. But, second, look at who would the State witnesses be. Who would the county witnesses be in this situation? I would suppose that the county witnesses and State witnesses would be State officials and county registrars. The implication I draw from your question is that for some reason or other, they would have to be compulsorily subpoenaed by the State in order to get county and State officials to testify. I do not think that is realistic.

Senator ERVIN. You do not think the witnesses would be confined to that, do you? If I were an attorney in the case and I wanted to show there had been no discrimination in the administration of a literacy case, I would want to subpoena somebody besides those charged with wrongdoing. I would want to subpoena someone who would prove his qualifications. I would like to show someone who had not proved his qualifications, that could not read or write.

Attorney General KATZENBACH. I would think, Senator, that so far as there is any difficulty in the subpoena power, it would be more of a difficulty for the United States, really.

Senator ERVIN. Well, the United States does not need to make out a case. The State and the political subdivision is already condemned upon an act of Congress without a trial by jury and by a paper signed by 20 people and a brief of the Attorney General. The Attorney General is not even required to have any evidence or present any reasons for his action.

Attorney General KATZENBACH. Well, as far as the latter part is concerned, Senator, the only determination by the Attorney General there is that there is a test or devices as indicated by this act where it is defined. I really believe that any Attorney General is capable of reading the lawbooks of the State, determining whether or not those State laws do provide for a test or device. I would hope that is within my competency and I would hope that would be within the competency of any of my successors.

But I do not think it is quite accurate to state that the State has to demonstrate all of his.

Look how this would work. In point of fact, the State could come in and simply have an affidavit, say there has never been any discrimi-

nation in the State on racial ground. If that affidavit was not tested and if evidence was not put in by the United States, there would be nothing before the court to indicate that there had been discrimination and I would think that that in itself would carry the burden.

I think it would be incumbent upon the United States at that point—after really a simple statement that there had not been discrimination—be incumbent upon the United States to put in evidence that there had been. It would then be incumbent upon the State to rebut that evidence and to carry the burden.

Senator ERVIN. I would hope that that would be true, Mr. Attorney General. But I was a little disturbed when I heard what you were quoted as say when you gave our testimony before the House Judiciary Committee. You said that this—it was pointed out that this applied to Aroostook County in Maine. You are quoted as having said—I was not there—that the fact that less than 50 percent of the people of voting age in Aroostook County, Maine, might not have voted might have been because there was a snowstorm there, but there was no snowstorm in 34 North Carolina counties or in Mississippi.

Attorney General KATZENBACH. That I do not know whether there was a snowstorm in Aroostook County, Maine, but I know there was no snowstorm—

Senator ERVIN. I know, but I do not know whether you have already made up your mind that 34 North Carolina counties are to be brought under this act and I am just a little afraid that you have already formed an opinion in this case, that you might not be willing to accept an affidavit against North Carolina.

Attorney General KATZENBACH. We do have some evidence of racial discrimination in the past in North Carolina.

Senator ERVIN. Yes; one of your predecessors came up here and told us about three precincts in North Carolina, one in Greene County, one in Camden County, and one in Brunswick County, and used that as an excuse for passage of a law that would have overturned all of the election laws in the United States which then existed. Lo and behold, the next afternoon, I called up my State board of election and found out that these things had been called to their attention and they had corrected them before the close of the time for registering and voting in the primary, which I think was the 1954 primary.

Now, where do you have evidence of violation of the 15th amendment in any of the 34 counties in North Carolina?

Attorney General KATZENBACH. Halifax County, Senator.

Senator ERVIN. How many instances?

Attorney General KATZENBACH. How many instances? There is a case in the eastern district of North Carolina there, where Negro voters brought suit in Federal district court.

Senator ERVIN. When was that suit brought?

Attorney General KATZENBACH. That suit was brought in May of 1964, Senator.

Senator ERVIN. And what happened to the suit? Do you have the title of it?

Attorney General KATZENBACH. Yes, it is *Austin v. Butts*, where a temporary restraining order was granted and a preliminary injunction was granted by Judge Larkins.

Senator ERVIN. What happened to it? Because judges issue preliminary injunctions as a matter of course in ex parte hearings.

Attorney General KATZENBACH. It was eventually dissolved, sir.

Senator ERVIN. Yes. In other words, it brought a suit for a restraining order and a restraining order was issued upon ex parte affidavits of the plaintiff. Then when the case came down to a hearing, it was dissolved?

Attorney General KATZENBACH. No; that is not quite correct, Senator. The preliminary injunction was issued after a hearing. Then after the people were registered in accordance with that preliminary injunction, the court subsequently, on a motion for dissolution, dissolved it.

Senator ERVIN. In other words, they found there was no necessity in Halifax County for any further injunction, much less a law like this. That is what the court found?

Attorney General KATZENBACH. I would say that the court found that there was necessity for a preliminary injunction, issued a preliminary injunction. When the registrar pursuant to that injunction had registered Negroes who had been discriminated against and was behaving as he should behave in this instance, subsequent to that, the court decided that the injunction no longer needed to stay in effect.

Senator ERVIN. That would indicate that in Halifax County, N.C., at least there existed laws sufficient to get people registered.

Attorney General KATZENBACH. In Halifax County now, that certainly is the view of Judge Larkins, yes.

Senator ERVIN. What about the other 33 counties of North Carolina?

Attorney General KATZENBACH. What about the other 33?

Senator ERVIN. Yes.

Attorney General KATZENBACH. We do not have any cases in that. I do not believe we have even gone and done investigations there. Largely our investigations and examination of voting records has been in some of the areas where, undeniably, the problem is much more severe.

Senator ERVIN. Then it is arguable as to whether there is any discrimination in North Carolina, if you have investigated cases where you say the discrimination is undeniably there.

Attorney General KATZENBACH. Yes, yes, Senator. That is the reason that these counties could come in and be relieved from this obligation.

Senator ERVIN. But they have to get them a lawyer and they have to come up to Washington and they have to disprove not only their innocence in the last—their innocence of discrimination during the last 9 years and 11 months and 29 days before the suit was brought, but they have to prove that that last day, do they not?

Attorney General KATZENBACH. Yes; that is right, Senator.

Senator ERVIN. So do you not think that the fact that less than 50 percent of the people vote or even the fact that less than 50 percent of the people of voting age register may be reasonably explained on grounds other than discrimination?

Attorney General KATZENBACH. I think in the particular instances, it might. I do not believe generally, it could.

Senator ERVIN. Well, in the presidential elections last year, there were certainly no sinful southern registrars running things in the District of Columbia, were there?

Attorney General KATZENBACH. I am sorry, Senator, I did not get the question.

Senator ERVIN. There were no sinful southern election officials determining who would vote in the District of Columbia, were there, in the last election?

Attorney General KATZENBACH. Not to my knowledge.

Senator ERVIN. And in fact, the District of Columbia had no literacy test whatever?

Attorney General KATZENBACH. That is right.

Senator ERVIN. Well, I wish you would tell me by what rational basis you can come to the conclusion that the fact that only 48.6 percent of voting age in Beaufort County, N.C., voted in the last election justifies denying North Carolina the right to have a literacy test administered there, because it shows discrimination, and the fact that only 38.4 percent of the people of the District of Columbia voted in the last presidential election indicates there is nothing wrong with voting practices in the District of Columbia?

Attorney General KATZENBACH. I would answer that, Senator, by suggesting to you that the citizens of the District of Columbia have not been permitted to vote at all for a rather long period of time. That has not been true of citizens of North Carolina. Therefore, I think the low figure within the District of Columbia might be explained by the fact that there was only a very short period in which people were permitted, only one time, to get the registration on the books for the people who had been denied the franchise since 1789.

Senator ERVIN. Do you have any other reason? The people of the District of Columbia were certainly told by the news media in the District. They were told almost from the top of the Capitol. They were told by both political parties—both political party organizations. And many public men told them that they had the right to come out and register to vote, did they not?

Attorney General KATZENBACH. Yes, sir.

Senator ERVIN. You would have thought men would be ready to just grasp at the opportunity to exercise the privilege of casting a vote in the District of Columbia the first time that voting was permitted.

Attorney General KATZENBACH. I was disappointed, too, that more did not register, Senator.

Senator ERVIN. Only 38.4 percent of the people of the District of Columbia came out and voted in the last presidential election. Do you attribute this to apathy?

Attorney General KATZENBACH. I think apathy plus the fact, Senator, that it was the first election, the people had to go and get registered. Perhaps the registration process was not run as efficiently and well as it should have been. But at least we know, Senator, that literacy tests have been used in some areas for racial discrimination purposes, and at least we know that there were no literacy tests in the District of Columbia. Therefore, it would seem to me that that figure at least is not because tests and devices were used to discriminate in the District of Columbia. Whether there was some other

method of discrimination or not, I very much doubt. But it would be possible.

Senator ERVIN. Your bill implies that since only 48.6 percent of the people of voting age in Beaufort County, N.C., voted in the last election shows that there is some rascality going on there, but that there is no rascality going on in the District of Columbia, where only 38.4 percent of the people registered.

Attorney General KATZENBACH. A large percentage of the residents of the people registered to vote and counted in the District of Columbia do vote in other States. That is another explanation perhaps, for the lower figures.

Senator ERVIN. Yes; but this bill is particularly directed to secure the right of Negroes to vote, is it not?

Attorney General KATZENBACH. Yes; to secure the right—

Senator ERVIN. Well, do you not know that about 53 percent of the population of the District is Negro?

Attorney General KATZENBACH. I think that is about right, yes.

Senator ERVIN. You do know that there was no discrimination which might explain the fact that only 38.4 percent of those people to come out and vote, regardless of whether they were Negroes or whites, do you not?

Attorney General KATZENBACH. This bill certainly does not cover the District of Columbia, Senator.

Senator SCOTT. Would the Senator yield there for just an attempt to clarify something, just briefly?

Senator ERVIN. Yes.

Senator SCOTT. May I suggest that perhaps another reason for not voting in the District of Columbia is that there is an income tax requirement in the District and a number of people are allergic about getting their names on any sort of rolls whatsoever? Do you think that could contribute to it, Mr. Attorney General?

Attorney General KATZENBACH. I would hope it did not, Senator.

Senator SCOTT. But you know it does.

Senator ERVIN. I would say to the Senator from Pennsylvania, there is an income tax in Beaufort County, N.C., and in every other county in North Carolina.

The CHAIRMAN. It is 12 o'clock. We will recess until 2 o'clock.

(Whereupon, at 12 noon, the hearing recessed, to reconvene at 2 p.m.)

AFTERNOON SESSION

Senator JOHNSTON (presiding). The committee will come to order.

Proceed where we left off. Senator Ervin. was questioning the witness.

Senator ERVIN. I would like to emphasize that I deplore any white man, most particularly a public official, in any Southern State, who does a wrong to a Negro or who deprives a Negro of any right whatever. A man or public official who does that commits a twofold wrong. He commits a wrong against the Negro who is denied his right. He also commits a grievous wrong against constitutional government in America, because he makes the task of preserving our original constitutional form of government much harder than it ought to be.

I would be in favor of any bill that is constitutional and operates on a fair basis which would put an end to the violation of the provisions of the 15th amendment. But I do not think this law does it. I can show you the arbitrariness of this section 3(a) by reference to my own State.

In the last election, 51.8 percent of all the North Carolinians of voting age voted. If the percentage had fallen below 50 percent, then under this bill every town in North Carolina and every one of the 100 counties would have been brought under its provisions. Among the hundred counties that would have been brought under the provisions of this bill would have been my own county and it would have been brought under the provisions of this bill notwithstanding the fact that, a few years ago, the Civil Rights Commission reported that 104.1 percent of all the Negroes of voting age in my county are registered.

Attorney General KATZENBACH. Thirty-four percent?

Senator ERVIN. No; 104.1 percent.

Attorney General KATZENBACH. May I say, Senator, that the act in that particular county could not have any impact.

Senator ERVIN. If North Carolina had not voted more than 50 percent in the last election---my county and the taxpayers would have had to have gone to the expense to come up here to Washington and be prepared, if necessary, to bring witnesses up here to prove that they were not included under this, because there would have been a presumption under section 3(a) that they were discriminating and violating the 15th amendment.

Attorney General KATZENBACH. May I be permitted to say, Senator, that I have no doubt at all of the sincerity of the views you express as to the duties of State officials. I know you hold those views very strongly.

Senator ERVIN. I appreciate that remark very much.

I want to discuss what I think makes this bill unconstitutional in part. I could not bring my law library up here so, of necessity, I have had to bring my text. "Twelfth American Jurisprudence," on the subject of constitutional law, section 2624, on page 16, says this:

A certain fact, or facts, may be made prima facie evidence of other facts if there is a rational connection between what is proof and what is to be inferred and if the rule is not arbitrary.

I think you and I are going to agree that is a correct statement of law?

Attorney General KATZENBACH. Yes.

Senator ERVIN. Does this section 3(a) create a presumption that if 50 percent or less of those of voting age are not registered, in the case of a State or a subdivision of a State where they have a literacy test or an understanding test, then the State or that political subdivision has been engaged in the violation of the provisions of the 15th amendment?

Senator ERVIN. Well, it is either a presumption or an assumption, one or the other, but it operates that way?

Attorney General KATZENBACH. Yes; it does.

Senator ERVIN. I contend that there is no logical relationship whatever between the fact that less than 50 percent of the persons of voting age in the State failed to vote and the presumption that this is due to a violation of the 15th amendment. I want to show you figures that I think support that position.

There are 34 counties in North Carolina in which less than 50 percent of the people of voting age voted in the last election. In virtually every one of these counties there was just one ticket that ran in the last election, the Democratic ticket. In most of them, there was no opposition for the Democratic candidate on the congressional ticket, except in districts where there was very weak opposition.

There was no race for the U.S. Senate. North Carolina is largely Democratic; although we have a strong Republican Party, that Republican strength is not located in the area of these counties. Now, of these 34 counties, the following counties voted: Beaufort County, 48.6 percent of those of voting age voted; in Camden County, 46.1 percent of those of voting age voted; in Gates County, 44.6 percent of those of voting age voted; in Iredell County, 49.7 percent of those of voting age voted; in Martin County, 46.1 percent of those of voting age voted; in Pasquotank County, 46.3 percent of those of voting age voted; in Perquimans County, 46.9 percent of those of voting age voted; and in Pitt County, 45.5 percent of those of voting age voted. Of all of those counties which I have enumerated, eight of these counties are located in the First Congressional District, which is overwhelmingly Democratic and in which the opposition to the Democratic candidate for Congress was negligible.

The following counties are in the Second Congressional District, where the Democratic candidate for Congress had no opposition whatever and there was virtually no Republican ticket in the field: Greene County voted 44.8 percent of its people of voting age. In Halifax County, the one we discussed this morning, 45.3 percent of its people of voting age voted; Lenoir County, 44.8 percent; Northampton County, 46.2 percent; Vance County, 49.3 percent; and Warren County, 47.9 percent. And I might add incidentally, a great many of these voters were Negroes. For example, the white population of Warren County is not but about 25 percent of the total population of the county.

Now, in the Fourth Congressional District, where there was no hotly contested congressional race, Nash County, where there was no local Republican candidate, as I understand it, voted 48.1 percent of its voters.

In the Fifth Congressional District, Person County voted 48.5 percent of its voters; in the Seventh Congressional District where the Democratic candidate for Congress had no opposition whatever, Bladen County voted 46.7 percent; in the Eighth Congressional District, Anson County voted 46.9 percent; and Union County voted 46.7 percent of its voters.

That makes 19 counties in North Carolina, which would be covered by section 3(a). The inference of section 3(a) is that in those 19 counties, as well as the other 15 counties which voted lesser amounts is that those counties practiced discrimination in violation of the 15th amendment.

And yet every one of those 19 counties cast a higher percentage of its vote than the State of Texas, which cast only 44.4 percent of its vote.

In other words, in these 19 North Carolina counties I have enumerated a higher percentage of their residents of voting age voted in the last presidential election than the vote in the State of Texas, in which the turnout was 44.4 percent. Yet under this presumption, the

fact that those 19 counties, voted less than 50 percent, implies that all of these counties violated the 15th amendment. Whereas the fact that a lesser number in Texas voted, 44.4 percent, does not raise any presumption that there was any election rascality of any kind whatsoever in the State of Texas.

So I say, Mr. Attorney General, that I do not think there is necessarily any logical connection between the assumption based on these percentages and the presumption that there was a violation of the 14th amendment.

Attorney General KATZENBACH. Senator, I do not know whether it is logical—a logical connection or not, but there is a connection in fact between them and I think that is the important connection.

If I might explain why I say that.

Senator ERVIN. Yes.

Attorney General KATZENBACH. In the 1964 election, about 61 percent of the electorate on a national average voted. There were nine States in which less than 50 percent voted. Eight of those States were located in the old Confederacy. Seven of those States had literacy tests, seven out of the nine under 50 percent. There were two States which did not have literacy tests.

Of the seven States that have literacy tests, six of them are located in the South. In four of—five of those States—excuse me, four, of those States, we have won one or more cases with respect to voting discrimination. All of those States have a large Negro population. Insofar as our figures are accurate and there is a difficulty with respect to figures on Negro registration in many areas, in those States, there is a substantially less number of Negroes registered than whites registered within those States which have large Negro populations.

In addition to that, we find that the net which is cast picks up 84 counties in 1 State—that is the State of North Carolina, again a State located within an area where, as I think you would agree, that has been racial discrimination generally.

Senator ERVIN. I would not agree with anything like that. I have lived there all my life and I do not think there has been any substantial racial discrimination on the ground of voting since I started to vote in 1922.

Attorney General KATZENBACH. I did not say on the ground of voting, Senator. I said within an area where there had been racial discrimination against Negroes in various respects; that is, segregated facilities, that kind of respect.

It picked up 34 counties there. It picked up three other counties in the whole of the United States out of hundreds. Apache County in Arizona, Aroostook County in Maine, and Elmore County in Idaho. Neither the Aroostook County in Maine nor Elmore County in Idaho has a substantial Negro population. Apache County in Arizona does not have a substantial Negro population, but it does have a fairly substantial Indian population.

It seems to me, under those circumstances, Senator, it could be a reasonable inference from those facts that the reason for the low vote, running 11 percent or more under the national average, would be the fact that Negroes were not registered and not voting.

Now, I agreed with you earlier in a statement that you got, I think, from American jurisprudence. In a matter of a commission ruling,

an administrative agency issuing a ruling, Mr. Justice Brandeis once said, and I think the same test applies to what amounts to a finding by Congress:

Its authority to legislate is limited to establishing a reasonable rule. But in establishing a rule of general application—
as this does—

it is not a condition of its validity that there be adduced evidence of its appropriateness in respect to every railroad to which it will be applicable. In this connection, the Commission, like other legislators, may reason from the particular to the general (*The Assigned Car Cases*, 274 U.S. 564, 583 (1927)).

Now, in this bill, because of the fact that the net cast out on this might include places in which there never had been any voting discrimination, section 3(c) was added so as to permit those areas in which the assumption was not valid to come in and to demonstrate that it was not valid. That seems to me a reasonable judgment by Congress to make and if this legislation—that this legislation is reasonable and is appropriate to the end to be served. That is, in essence, the argument that we make with respect to this.

Senator ERVIN. Well, I wish you could explain the voting turnout in the State of Texas, for example, as compared with the State of North Carolina? We out voted the State of Texas by some 7 or 8 percentage points and we had no hot Senate race like they had between Senator Yarborough and the Republican candidate for the Senate. We had no hot Governor race like that between Governor Connally and Mr. Cox. And we had no native-born son running for President of the United States. I would like for you to explain why only 44.4 percent of the people of voting age in Texas voted.

Attorney General KATZENBACH. Poll tax.

Senator ERVIN. Poll tax?

Attorney General KATZENBACH. Yes.

Senator ERVIN. Has not the Federal poll tax been repealed?

Attorney General KATZENBACH. Yes, but they had to pay a poll tax to vote for the State officials.

Senator ERVIN. But they did not have to pay a poll tax to vote for the President and the 44.4 percent represented the people who voted in the presidential election and there was no poll tax in the presidential election. So I think that you might offer another explanation as to the presidential election. The poll tax did not apply to the Senate race, either.

Attorney General KATZENBACH. No, that is true, Senator, but I still think the fact that the poll tax existed, people knew that it existed—I do not know whether a lot of people even knew that it did not apply to Federal elections. They knew that it had been applied for years. I would think that that would count—at least be one explanation for the low voting percentage. I do know that it was not a literacy test because they do not have literacy tests.

Senator ERVIN. And yet, since they have no literacy test to impede their voting, they are to be exempt from all implications of any raciality, whereas 19 counties of North Carolina, in which the vote was heavier, are going to be charged with that. And they are going to have their power to apply the literacy tests of North Carolina, the power to manage their own elections, taken away from them unless they can come all the way up to the District of Columbia and prove

before a court that they are as pure as the driven snow, not only in a presidential election, but for the 10 years preceding the trial in the case.

Attorney General KATZENBACH. That is correct, Senator.

Senator ERVIN. Now, I notice here also—do you not think perhaps that apathy had a good deal to do with the people of Texas not voting in a presidential race?

Attorney General KATZENBACH. I think apathy is a good reason for the fact that unfortunately, a good deal of Americans who do not have any other reasons for registering do not vote. I am not suggesting that the only reason here why people do not vote is racial discrimination. But I am suggesting that assuming apathy runs somewhat constantly through the American public, 61 percent voted in that election on a national average. Therefore, less than 50 percent voted in these areas. Then I would just be repeating the argument I made before, which I shall not bore you with.

Senator ERVIN. Do you not know that the greatest communications media in the world are probably located in New York City?

Attorney General KATZENBACH. The greatest number?

Senator ERVIN. Media of communications. There are more TV broadcasts there and more papers printed there. You have a highly literate population in New York, do you not?

Attorney General KATZENBACH. Yes.

Senator ERVIN. Can you explain why it was that only 51.3 percent of the people of New York City voted in the last election? They have a literacy test, but they have no sinful southerners up there administering their literacy tests.

Attorney General KATZENBACH. No, but a good many Puerto Ricans are excluded in the State of New York by the English language test. That would explain it in part.

To go back to my text answer for a minute, Senator, you know, a poll tax exemption certificate was required of Federal electors there. And I think the fact of that certificate may have been a factor in keeping people away from the polls.

Senator ERVIN. Under this bill the literacy test that applies to the Puerto Ricans in New York would still remain in full force and effect, unaffected, and the literacy test in 34 counties of North Carolina would be outlawed, is that not so?

Attorney General KATZENBACH. That is right, Senator, because this is based on the 15th amendment. And I do not believe that that situation in New York could be cured under the 15th amendment. It might be cured under the 14th amendment. I would be inclined to think that it could.

I do not understand why the State of New York has not cured it for itself.

Senator ERVIN. But anyway, the Puerto Ricans cannot account for the difference between the 100 percent of the people of voting age in New York City and the 53.3 percent of those people in New York City who have actually voted in the presidential election?

Attorney General KATZENBACH. I think that is true, Senator. I might account for part of the difference between the 51 and 61 percent national average, which I would think would be a more relevant figure, perhaps, to use.

Mississippi was 33 percent, I believe, and I think that might be accounted for by the fact that there is, with a large Negro population, only 6 percent of the Negroes are registered.

Senator ERVIN. We are talking about New York right now. I would like to stick to it.

The whole State of New York only voted 2 points or less above the national average. They voted only 63.2 percent. And you have two very strong political parties there, do you not?

Attorney General KATZENBACH. Yes, but there was not great enthusiasm for the Republican candidate for President.

Senator ERVIN. Yes, but there was great enthusiasm on the one side or the other for the two candidates of the Senate?

Attorney General KATZENBACH. Yes, there was a good deal of feeling on it.

Senator ERVIN. I would like to say this, that while we are talking about percentage, if 1 percent of as much money were spent in North Carolina as was reputed to be spent in that Senate race, we would have gone far beyond New York's 63.2 percent, in my judgment. That is a matter of conjecture.

Attorney General KATZENBACH. Most of the elections were not contested in North Carolina.

Senator ERVIN. In practically every congressional district there was a race in New York, was there not?

Attorney General KATZENBACH. Yes, I thought there was not in North Carolina.

Senator ERVIN. There are not many hot congressional races in most of those counties where these are located. In many cases, there is no contest at all. And there were county tickets in virtually every county in New York, was there not?

Attorney General KATZENBACH. Yes.

Senator ERVIN. And there was hotly contested tickets in virtually every county of New York?

Attorney General KATZENBACH. Yes.

Senator ERVIN. And now contrast that to a situation where 44 percent of the legislators had no opposition whatever.

Attorney General KATZENBACH. Yes.

Senator ERVIN. Now, go back to Texas for a minute. The figures show that in the State of Louisiana, which is one of these States that this bill would hit, 47.3 percent of the voters in Louisiana voted, whereas only 44.4 percent of the people in Texas voted.

Attorney General KATZENBACH. Yes.

Senator ERVIN. How do you explain that difference?

Attorney General KATZENBACH. I explain it, Senator, in the same way I explained it before. I think that the test that we have here and the States it has picked up are generally valid. I said I thought there were reasons why the vote was low in Texas and I described those reasons as the poll tax and as the need for a Federal certificate at that time.

Louisiana—there has been pretty good compliance with the 15th amendment. In the southern part of the State, in the Catholic parishes and the parishes around New Orleans. The northern part of the State is one of the worse areas with respect to voting discrimination that there is in the United States. I think the low vote in Louisiana

is fairly attributable to the voting discrimination that exists in a large part of that State, though with great credit to the southern part of the State, the same discrimination does not exist there as it does in the northern parishes.

Senator ERVIN. Yet this bill, like the rain which the Lord sends upon the just and the unjust, would apply in like manner to the just people of southern Louisiana as it applies to those in northern Louisiana?

Attorney General KATZENBACH. That is right, Senator. I do not think that Congress has ever been able to enact a piece of legislation that is so precise that nobody is caught up within it where there might not be a reason for it. If you enact gun legislation, for example, and you put reasonable rules and regulations on gun legislation, you nonetheless may be prohibiting guns to people to whom there would be no danger to give them, who would know how to handle them. This happens repeatedly, as the quote from Mr. Justice Brandeis shows. Make a general regulation with respect to railroads and it may not operate with exactly the same force and effect on every railroad. There is a need for general terms in legislation, for general standards in legislation. If those general standards are reasonably calculated to produce the results, to solve the problem, then I believe that it is an appropriate means of enforcing in this instance the 15th amendment. If there is a better way of cutting it but you get the same results, then I do not even think that that means that this is not an appropriate way of doing it.

We have tried to draft, with the help of many people, a law that does get at the problem, that does resolve the problem, that does hit the areas where there is racial discrimination and which works as objectively and as fairly as we were able to draft it to make it work and I have no doubt that it is constitutional. I think it is fairly strong medicine, Senator, but we have not succeeded under the three preceding acts to deal with this problem where it exists and at the heart of where it exists.

Some States made great progress in this respect.

Senator ERVIN. Can you tell me of any other act, assuming that this would be enacted into law, that has been passed by the Congress since 1868 that was so phrased that it would only apply to one section of the country?

Attorney General KATZENBACH. I do not think this is so phrased as to only apply to one section of the country. I think this is so phrased that perhaps only one section of the country brought itself within its provisions.

I mean by that if the 15th amendment, Senator, for the sake of discussion, if the 15th amendment will be violated in 6 States and you then enact a law and not in any of the other 42, and you then enact a law to enforce the 15th amendment, it would obviously only apply to those 6 States that were in violation.

Senator ERVIN. Do you know of any other time Congress has been asked to pass a law that would only apply to one section?

Attorney General KATZENBACH. The 1964 Civil Rights Act, it seemed to me, only had a real application—

Senator ERVIN. Oh, it covered the whole country by its terms.

Attorney General KATZENBACH. Well, so does this by its terms, Senator.

Senator ERVIN. It was applicable to the entire country. And in your voting rights section of the Civil Rights Act of 1964, according to its terms, it applied to every election official in the United States.

Attorney General KATZENBACH. I know. This law by its terms applies to every State in the country. It happens that, taking that standard that has been put in there, it is reduced as far as States are concerned to seven States, one of which is in the Far Northwest, six of which are in the South.

As far as counties are concerned, outside those States, most of them are in the South. There are three it could apply to: one in the Middle West, one in the Northeast, one in the Southwest.

Senator ERVIN. And that is because the terms of this statute were drafted so that they would have that result; is it not true?

Attorney General KATZENBACH. It was certainly our intention, Senator, to cover those areas where we thought the 15th amendment—was a strong probability that it was being violated. It is to to enforce the 15th amendment.

Senator ERVIN. Would you favor the passage of a law, for example, against smuggling, and say they are only smuggling down on the Mexican border and therefore we will fix the law so it will only cover the Mexican border?

Attorney General KATZENBACH. Senator, I suppose if it were a law against smuggling and there was smuggling on the borders, it could only cover those States along the borders.

Senator ERVIN. And this law in our judgment covers the 15th amendment violations? Congress picks out certain States and declares by legislative enactment that these States violate the 15th amendment, while all the other States are acquitted of that charge. Is that not the effect of the bill?

Attorney General KATZENBACH. Senator, the effect of this bill is to cover those areas which have literacy tests which have been a major problem for us in terms of racial discrimination and where there is less than 50 percent who voted in the 1964 election, because we believe that the relationship between those figures and the 15th amendment was sufficiently close for this to be a racial judgment.

Senator ERVIN. Well, the effect of these bills—and I will ask if it were not for this deliberate purpose—is to outlaw the literacy tests in about 6 or 7 States or parts of States and to allow literacy tests to continue to exist in the other 14 States which have them.

Attorney General KATZENBACH. There is no objection to literacy tests. While I personally do not think much of them, there is no objection to literacy tests in any area where they have been used and fairly applied and administered throughout the past. The effort here was not to abolish literacy tests except in those areas where there was reason to believe that those literacy tests had been used for purposes of violating the 15th amendment.

Senator ERVIN. Let's see if you will concede that this bill was deliberately written with the objective of establishing a legislative enactment stating that certain States in certain areas were violating the 15th amendment whereas other States and areas were not?

Attorney General KATZENBACH. Senator, in searching the test that made a relationship between the 15th amendment and these factors, I think one could, as I have said repeatedly here, fairly make this

assumption in this test. If checking that against our figures, it indicated that the States of Mississippi, Louisiana, Alabama were not included within this test, I would have had doubts about the test myself, because I know those are areas where we have brought repeated cases where we—where we have won cases and we have the facts in other cases which I believe establish violations of the 15th amendment.

So I am frank to say if, in experimenting as we did with various tests to try to get them fair and objective, and with a relationship between that and the 15th amendment, if I had discovered that a test worked out in such a way that it included six States with no Negro populations and eliminated all States with large Negro populations, I would have looked again at the test.

Senator ERVIN. Now has the Department of Justice brought any voting rights suit in the State of Virginia?

Attorney General KATZENBACH. No; we have not, Senator.

Senator ERVIN. Has the Department of Justice brought any suit in the State of North Carolina?

Attorney General KATZENBACH. No; we have not, Senator. We did prepare some cases in North Carolina and then discussed our evidence with local officials and the local officials agreed rather quietly and without publicity to cure the situation which existed in those counties.

Senator ERVIN. Well, you never brought any cases, did you?

Attorney General KATZENBACH. No; we have never brought a case anywhere where we thought we could solve it without it.

Senator ERVIN. Did you bring any cases in South Carolina, voting rights cases?

Attorney General KATZENBACH. Only investigations, Senator. We have not brought any cases there yet.

Senator ERVIN. Did you bring any voting rights cases in Georgia?

Attorney General KATZENBACH. Yes, Senator.

Senator ERVIN. How many and where?

Attorney General KATZENBACH. We brought one case, there was one in 1960 in Terrell County, Ga.

Senator ERVIN. That was brought under the old 1957 act?

Attorney General KATZENBACH. Yes.

Senator ERVIN. It was brought in Terrell County, the *Rains* case?

Attorney General KATZENBACH. Yes.

Senator ERVIN. Have you brought any other in Georgia?

Attorney General KATZENBACH. In Bibb County, B-i-b-b.

Senator ERVIN. There are two cases in Georgia. As far as North Carolina and Virginia are concerned, you were able to work out all of your voting problems without even using all of the existing laws?

Attorney General KATZENBACH. No, Senator; and I will tell you why that is not quite a proper inference to draw. We work with a limited number of lawyers in the Department of Justice. As my testimony indicated, these cases take a great deal of time to prepare, to bring, to argue and to try. The decision was made by my predecessor to concentrate the efforts of the Civil Rights Division in those areas where the problem was most aggravated, not in areas where the problem might exist, but where, as a general proposition, it was less aggravated. So we have concentrated our litigative efforts largely in northern Louisiana, in the whole State of Mississippi and in several

counties of Alabama, and against the whole State of Mississippi, the whole State of Alabama, the whole State of Louisiana. This is where we simply have, so to speak, focused our resources.

I do not think that the inference could be fairly drawn that because we have not brought cases elsewhere, there may not be racial discrimination. Those are clearly, Senator, the areas where the problem is most severe in this country.

Senator ERVIN. How many lawyers do you have in the Civil Rights Division of the Department of Justice?

Attorney General KATZENBACH. We now have just a few over 100, Senator, as a result of the increase to enforce the 1964 act. During most of the period we are talking about, there were between 40 and 45 lawyers in the Civil Rights Division. It takes about six lawyers 1 year to go over the records and to prepare one difficult case.

Senator ERVIN. You have a U.S. attorney and several assistants subject to the direction of the Department of Justice in every district in the country, do you not?

Attorney General KATZENBACH. Yes, we do, Senator. And they are very busy people.

Senator ERVIN. You have the FBI available to make investigations, do you not?

Attorney General KATZENBACH. Yes, we do, Senator.

Senator ERVIN. And how many investigators does the FBI employ?

Attorney General KATZENBACH. How many are there?

Senator ERVIN. Yes.

Attorney General KATZENBACH. Throughout the United States, there are about 6,000.

who visit all of the localities and all of the States in the Union who can obtain information of the voting provision, do you not?

Attorney General KATZENBACH. Yes, we do, Senator, but I have never given the assignment of preparing a law case to a marshal.

Senator ERVIN. But you have to have some investigations—

Attorney General KATZENBACH. They are not trained for investigations, Senator, they are trained for other purposes.

Senator ERVIN. That is true, but you have not only had that, you have had the assistance of all these various organizations like the NAACP in collecting information, have you not?

Attorney General KATZENBACH. No, Senator. Our method of collecting information is to go and get and examine the voting records and from the voting records, try to show a pattern of practice of discrimination. This means going over every application that has been made for a period of time; then you have to identify the people as whites or Negroes.

Now, in the State of Mississippi, for example, Congress enacts a law that gives us power to go in and to get voting registration records. The Legislature of Mississippi immediately thereafter enacts a law which makes it permissible to burn all voting records. The State of Mississippi then forbids voting records to be kept on a racial basis at all, so that we have the problem of going out with the Bureau and identifying each person to find out whether they are white or Negro, because we have to do that to make the pattern of practice.

Senator ERVIN. Has it been a Federal crime since 1957 to destroy a voting record?

Attorney General KATZENBACH. Only since 1960.

Senator ERVIN. Well, that is 4 years.

Attorney General KATZENBACH. Yes.

Senator ERVIN. Have you prosecuted anybody for violation of that statute?

Attorney General KATZENBACH. No, I do not believe so, Senator.

Senator ERVIN. What is the use of passing a statute if you do not use it?

Attorney General KATZENBACH. There is a lot of statutes you do not prosecute people under if they have not violated them.

Senator ERVIN. You have just said the people of Mississippi violated it.

Attorney General KATZENBACH. They did before. They passed a law which made it permissible to burn all their records. I misstated it, because they passed that just before the 1960 act came into being and we could not have ex post facto law.

Senator ERVIN. But under the Federal supremacy law, that law has been invalidated, has it not?

Attorney General KATZENBACH. Yes.

Senator ERVIN. For 4 years?

Attorney General KATZENBACH. Yes, but—

Senator ERVIN. For the past 4 years—

Attorney General KATZENBACH. I can assure you in Mississippi, we would have to litigate that to the Supreme Court.

Senator ERVIN. As a lawyer, I do not object to litigation. I would rather have my rights litigated than have them fixed by a judicial declaration without a trial.

Attorney General KATZENBACH. Senator, if I could go back to what you said earlier, and I think it is really the key point here, when you made your very excellent and I know very sincere statement about the duties of State officials, we would not have any problems, there would not be any need for this legislation whatsoever if in this field, State officials had in certain areas complied in the same way with the Federal Constitution and with the Federal laws as one would expect normally. It is part of our Federal structure that they should and our Federal structure depends on the fact that they do. The surest way of destroying the rights of States and the surest way of interfering with proper federalism comes about where State officials simply will not obey Federal law no matter how clearly that Federal law is stated in statute or stated in judicial decisions. Our experience in the voting area has been this, that no matter what is decided by courts, no matter what is passed by Congress in this respect, every single place in some States, the only way you can get compliance is to litigate and then that is defended, it is defended up through every court procedure to the Supreme Court, no matter how clear and obvious the points, no matter how many times those same points have been decided, until eventually you get a decree.

Then the decree is examined carefully to see whether there is any way in which a certain practice not explicitly prohibited by the decree can be engaged in for the same discriminatory purposes.

When this is done and you go back to court to get the judge to broaden the decree, his capacity and jurisdiction to do that is litigated, then that is taken on appeal and that is taken to the Supreme Court.

When you run out of these things, the legislature enacts a new test and that has to be litigated and appealed and go to the Supreme Court.

If these people were doing what you and I believe they should be doing, this Congress would not be considering this act.

Senator ERVIN. That would be a heavenly condition. If everybody would obey all the laws, we would have no need for a Department of Justice—

Attorney General KATZENBACH. Not everybody, State officials, people who have taken an oath to uphold not merely their own constitution but the Constitution of the United States.

Senator ERVIN. These cases are all tried in a Federal court, are they not?

Attorney General KATZENBACH. Yes; they are.

Senator ERVIN. They are tried by judges selected in the first instance by the Department of Justice, are they not?

Attorney General KATZENBACH. That is one way of putting it, Senator.

Senator ERVIN. And that is about the only way you can put it, is it not?

Attorney General KATZENBACH. Senator, all the judges that have decided cases have, of course, been nominated by the President and with the advise and consent of the Senate. It is true that, as you know, the Senators play a role in recommending judges.

Senator ERVIN. And I know from my own experience that the Department of Justice turned down some I recommended.

Attorney General KATZENBACH. Yes, from time to time, we have done that. I am not trying to say we have not played a role or to deny. If they are bad judges, and I am not saying here or trying to cast any reflection on the judiciary, but certainly the Department of Justice has played a role in their selection and in proving their qualifications. No question about that.

Senator ERVIN. Let us see if we can get to something else we can agree upon.

Attorney General KATZENBACH. You and I have had differences on the Constitution before, Senator.

Senator ERVIN. I would like to read this. It is sustained by many cases, but I just did not bring the whole law library. I do not have as many lawyers as the Civil Rights Division of the Department of Justice. I do not have as many messengers either and the ones I can impress cannot carry too many books. So I will read from 12 American Jurisprudence, subject: Constitutional Law, section 625, starting on page 317 and going to 318:

A conclusive presumption or a presumption that operates to deny a fair opportunity to appeal it violates the due process clause.

Now, do you agree with me that is a correct statement of law?

Attorney General KATZENBACH. Yes.

Senator ERVIN. We will go on over to section 3(c). It reads as follows:

Any State with respect to which determinations have been made under subsection (a) or any political subdivision with respect to which such determinations have been made as a separate unit, may file in a three-judge district court convened in the District of Columbia an action for a declaratory judgment against the United States, alleging that neither the petitioner nor any person acting under color of law has engaged during the ten years preceding the filing

of the action in acts or practices denying or abridging the right to vote for reasons of race or color. If the court determines that neither the petitioner nor any person acting under color of law has engaged during such period in any act or practice denying or abridging the right to vote for reasons of race or color, the court shall so declare and the provisions of subsection (a) and the examiner procedure established by this Act, shall, after judgment, be inapplicable to the petitioner. Any appeal from a judgment of a three-judge court convened under this subsection shall lie to the Supreme Court.

No declaratory judgment shall issue under this subsection with respect to any petitioner for a period of ten years after the entry of a final judgment of any court in the United States, whether entered prior to or after the enactment of this Act, determining that the denials or abridgments of the right to vote by reason of race or color have occurred anywhere in the territory of such petitioner.

Now, there are district judges in every State covered by this act, are there not?

Attorney General KATZENBACH. Yes, Senator.

Senator ERVIN. There are U.S. courts of appeal which have appellate power over those district courts in every are under this act?

Attorney General KATZENBACH. Yes, Senator.

Senator ERVIN. Yet this provision I have just read to you slams shut the door of every courthouse in the United States to any State or to any political subdivision of a State in which 50 percent of the people failed to vote in the presidential race in 1964 except the District Court of the District of Columbia, does it not?

Attorney General KATZENBACH. It requires them to come to the district court, yes.

Senator ERVIN. Well, does it not deny jurisdiction over this proceeding to every Federal district court except the district court sitting in the District of Columbia?

Attorney General KATZENBACH. Yes, it does, Senator.

Senator ERVIN. What is the distance between New Orleans and the District of Columbia?

Attorney General KATZENBACH. I think it is about 1,000 miles, is it not, Senator.

Senator ERVIN. I would estimate that, yes. And what is the distance between Mobile and the District of Columbia?

Attorney General KATZENBACH. I would think that would be roughly the same, perhaps a little less, is it?

Senator ERVIN. And some of these North Carolina counties that would have to come up here under this, they are anywhere from 275 to 400 miles away, are they not?

Attorney General KATZENBACH. And Alaska is about 4,000 miles away.

Senator ERVIN. The Department of Justice is not going to bring Alaska down here.

Attorney General KATZENBACH. I think Alaska, under the way it is drafted now, Alaska would have to come into court.

Senator ERVIN. So Alaska is going to have to come down here and exonerate itself under this bill.

Attorney General KATZENBACH. Yes.

Senator ERVIN. Do you think it is a fair system of justice which compels people to travel 250 or 1,000 or 3,000 miles in order to gain access to a court of justice?

Attorney General KATZENBACH. Senator, the word "people" here you are talking about is a State or political subdivision. This is not an issue of making some person deprived of any funds.

I will tell you, the States have not had any question about coming here to Washington to the Supreme Court.

Senator ERVIN. Oh, yes, many never get here.

Attorney General KATZENBACH. They have come time and time and time again.

Senator ERVIN. This not only applies to a State, but this would apply to any little election district in the State, even though it might not have more than 100 people living in it.

Attorney General KATZENBACH. I do not believe so, Senator. There is a question as to what the term "political subdivision" means. I have taken the view in the other body and I would state it here that we are talking about the area in which people are registered, the appropriate unit for registering. I believe in every State that comes within the provisions of this, we are talking about no area smaller than a county or a parish.

Senator ERVIN. Do you not think you had better amend your bill to so provide, because in North Carolina, every municipality is a political subdivision of the State, even every sanitary district is a subdivision of the State. Also, every election district is a subdivision of the State, every school district is a subdivision of the State, every special bond, school-bond, district is a subdivision of the State.

Attorney General KATZENBACH. I think that might be done to define political subdivision here in the bill in that way, Senator. That is what I intended.

Senator ERVIN. This would certainly cover Glen Alpine Township, even though its population would not be more than 250 people.

Attorney General KATZENBACH. It was not intended, Senator—

Senator ERVIN. It does, because the town of Glen Alpine is certainly a political subdivision of the State.

Attorney General KATZENBACH. I would certainly not construe the act in the way you have construed it, but that certainly is a point which could be clarified, Senator.

Senator ERVIN. It should be clarified, because I do not want you having any official authority regulate any elections in Glen Alpine Township or Burke County.

Attorney General KATZENBACH. We shall stay out of that, Senator.

Incidentally, Senator, I was thinking—I do not know that it makes a lot of difference, but when I agreed with your statement about due process, I was wondering whether due process actually does apply to a State or political subdivision? I do not think it is important, because I would want the principles of due process to apply there, but I wondered as a technical matter whether they would be a person within the due process laws.

Senator ERVIN. This could be an argument for your position.

Attorney General KATZENBACH. It does not make any difference.

Senator ERVIN. If the State or county is going to pass on these qualifications to vote, the decisions are made by individuals, by officeholders. These officeholders who are going to have their powers taken away from them are individuals. And I certainly believe if the Federal Government is not willing to uphold the fundamentals of due

process by statute to a State or political subdivision of a State, it is playing a sorry role, even though the Constitution may not specifically spell out due process in this area.

Attorney General KATZENBACH. I agree. I do not know what or whether that clause applies, but I agree substantively that it ought to. It ought to be a fair procedure, and I think under this, it is.

Senator ERVIN. Now, under this section 3(c), the Government does not have to do anything to make out a case, it does not go into court?

Attorney General KATZENBACH. That is right, Senator.

Senator ERVIN. It has already had these people condemned by act of Congress?

Attorney General KATZENBACH. I think "condemned" is a strong word, Senator.

Senator ERVIN. Does not subsection 3(a) say to the affected States and subdivisions, "Since these figures apply to you, you have manifested to our satisfaction that you are not worthy to exercise your governmental powers and you have to prove certain facts in order to establish that you are worthy, namely, that these figures do not apply to you"?

Attorney General KATZENBACH. Yes; that is right.

Senator ERVIN. It would not be sufficient under this law, would it, for a State to come in and show that in the election of 1964, it practiced no discrimination against any voter, either with respect to registration or voting on account of race or color. That would not be sufficient to exonerate him, would it?

Attorney General KATZENBACH. No; it would not, Senator; that is right.

Senator ERVIN. So you have a presumption as far as 1964 is concerned which they cannot rebut under this bill.

Attorney General KATZENBACH. It is not sufficient for them to show it simply in 1964 or simply in 1960. What they have to show is that there are no instances of this or a number of instances of this in a prior 10-year period.

Senator ERVIN. Do you not think that any fair system or procedure which raises a presumption that a State or a political subdivision of a State discriminated against people in connection with the election of 1964 ought to contain a provision so that the presumption can be rebutted by proof that there was no such discrimination in the election of 1964?

Attorney General KATZENBACH. May I explain why I do not think that is correct, why I do not think that is a reasonable assumption?

Senator ERVIN. I would like to have an explanation of that, as I have thought about it for a long time.

Attorney General KATZENBACH. Let me see if I can explain it. People attempt to register to vote. I do not know whether you have permanent registration in North Carolina or not. Do you?

Senator ERVIN. Our county board of elections can order a reregistration whenever they see fit, or they can let the previous registration stand. This depends on their discretion.

Attorney General KATZENBACH. My point on this would be that if people attempted to register in 1955 and were turned down, attempted to register in 1958 and were turned down, attempted to register in 1960 and were turned down, attempted to register in 1962 and were turned

down, they might not attempt to register in 1964. To show in the year 1964 none of these people who had been turned down time and time and time again in attempting to register would not satisfy me.

Do I make my point, that people who have been discriminated against in the past may not attempt in 1 year to register or vote if they believe and have reason to believe that that would be futile? The reason for going back on this is to show that this has not existed over a period of time, so that people are not frightened or do not think it is useless to go and attempt to register to vote. But it would not be enough to show that we did not attempt to discriminate against people in 1964.

If we discriminated hard enough against them in 1963, they might not attempt in 1964 to register.

Senator ERVIN. That may be true. But at the same time you do not create a presumption on the strength of what happened 10 years before. You create a presumption on account of what happened in 1964 on election day.

Attorney General KATZENBACH. Yes, because we thought we would take the highest figures that had ever been attained in a national election; we thought this would give every benefit.

Senator ERVIN. You create a presumption based on conditions in 1964 and then you say they cannot rebut that presumption by showing there is not any truth in the presumption itself. Instead, they have to go back and show that from time almost immemorial, they have not sinned.

Attorney General KATZENBACH. Yes, Senator, but the 1964 check here is simply to take the latest test to see how many people voted in the latest election in which more people voted, a higher percentage of people voted than in recent years, the fairest test we could devise. But the reason they did not vote in that election may very well be the fact that they were not permitted to register in any of the years prior to 1964.

Senator ERVIN. So under this, even though a State may have committed an offense in this respect, nine and a half years ago, and reformed the next day, and even though for nine and a half years, they have not discriminated against anybody, have not denied anybody the right to vote on account of race or color, yet you would deny them a place of repentance and deny them the capacity to rebut a presumption based solely upon what happened in 1964?

Attorney General KATZENBACH. That is right, Senator. Any period of time of that kind, as you realize, is necessarily an arbitrary period. If we took 9 years, you could make your argument on eight and a half years. If we took 5 years, you could make it four and a half years.

The question is: If they ever have done this, have they really reformed? If the only instances of discrimination were nine and a half years before and they have really reformed since then, then 6 months after the enactment of this act, they get out from underneath these provisions.

Senator ERVIN. Not according to this law. They have no legal right. How is it that they can get out from under the provisions of this bill in 6 months?

Attorney General KATZENBACH. Because 6 months after those instances of discrimination, if they occurred nine and a half years ago,

they would be able to establish that they had not discriminated during the previous 10 years.

Senator ERVIN. That is not what it says. It says that no declaratory judgment shall issue under this subsection with respect to any petitioner for a period of 10 years after the entry of a final judgment of any court of the United States, whether entered prior to or after the enactment of this act, determining that denials or abridgments of the right to vote by reason of race or color have occurred in the territory of the petitioner.

This act would condemn a State or political subdivision of a State for something it had done as much as 10 years before, and then say it could not get in the courthouse, even in the District of Columbia, to have that question reviewed for 10 years thereafter.

Attorney General KATZENBACH. That paragraph was not intended to apply to judgments by this three-judge court in the District of Columbia, Senator. I agree with you that it could possibly be read in that way. That was not the intention. The intention was to pick up other judgments under the existing voting laws that could be, if necessary, clarified. I think that is what it says, but if you do not—

Senator ERVIN. Do you not agree with me that when the courts come to construe this act, they are going to have to go by what is said in the act and not express the intention of the drafters?

Attorney General KATZENBACH. Of course, Senator. As I said, I think that is what it says in the act, but if it is not clear, let us perfect it. Let us make sure that is what it says.

Senator ERVIN (reading):

No declaratory judgment shall issue under this subsection with respect to any petitioner for a period of ten years after the entry of a final judgment of any court of the United States.

Now, is not the District Court of the District of Columbia a court of the United States?

Attorney General KATZENBACH. Yes.

Senator ERVIN. Well, I do not see how it could be drawn any more plainly.

Senator HART. If the Senator would yield, does there not have to be a judgment of discrimination?

Attorney General KATZENBACH. Yes.

Senator HART. If the judgment was not, the 10 years does not run.

Senator ERVIN. No other court can make a judgment—yes it can, because you go back even if the case is tried before this act, it goes into effect in this bill.

Attorney General KATZENBACH. Yes; that was the intention.

Senator ERVIN. I shall respectfully ask Senator Hart to listen to this:

No declaratory judgment shall issue under this subsection.—

What is this subsection? It is the very subsection that deals with the enforcement of this act—

with respect to any petitioner—

And the word "petitioner" comes from this act—

for a period of 10 years after the entry of a final judgment of any court of the United States.

Now, the court that is going to render the judgment under this subsection is a court of the United States. I cannot figure how anybody could have gotten—

Senator HART. If the Senator would read on, any judgment "determining that denials or abridgments" have occurred.

Senator ERVIN. But that is what the district court is here for, to determine whether denial or abridgment has occurred. At least, theoretically, they are here to give a person a chance to prove that he has not done that.

Attorney General KATZENBACH. Senator, my reason for interpreting it this way would be that you do not get that kind of a judgment under this procedure in a previous paragraph. The only thing you can get under it is a declaratory judgment that you have not. You do not get a judgment that you have. Therefore, I would not have thought that this would have applied. But if the point is not clear, we ought to make it clear, I agree with you.

They seek a declaratory judgment that they have not; there is evidence that they have. The court denies the declaratory judgment that they have not. There is no judgment made that they have.

Senator ERVIN. The issue which is supposed to be raised is whether you have abridged or denied anybody's right to vote on account of race or color? Is that not the issue that is put in the bill?

Attorney General KATZENBACH. The issue is that they are seeking a declaratory judgment that they have not. The court would refuse that declaratory judgment if there is evidence that they had. It would not issue a judgment to the effect that they had discriminated; therefore, there would be no judgment—it is a technical point. But I think there would be no judgment to the effect that they had. It would simply be a denial of the relief sought.

Senator ERVIN. And be a denial on the ground that they had failed to show.

Attorney General KATZENBACH. Yes.

Senator ERVIN. This is just like a negligence case. A plaintiff sues for negligence. The court decides that the defendant was not negligent. Is that not an adjudication that there was no negligence?

Attorney General KATZENBACH. Yes.

Senator ERVIN. And when the people say, we have not discriminated, and the court says, you failed to prove that you have not discriminated, is that not tantamount to a declaration that you have discriminated?

Attorney General KATZENBACH. Whether or not it is tantamount to such a declaration, it is not a final judgment determining that denials or abridgments occurred.

Senator ERVIN. Why? It is the last court you can go to, is it not, except an appeal to the Supreme Court? If the Supreme Court affirms it, it is a final judgment; is it not?

Attorney General KATZENBACH. Yes, but—

Senator ERVIN. It is about the "finalist" judgment I have ever seen, as they cannot do anything about it for 10 years.

Attorney General KATZENBACH. It is a very final judgment, Senator, but it is not a judgment determining this. That is all.

Senator ERVIN. So I would say that the distinction you draw is—well, it is not quite as wide as the distinction between Tweedledum and

Tweedledee. I mean no disrespect. The difference between Tweedledum and Tweedledee is just about as wide as that gulf which yawned between Diomedes and Hades.

Attorney General KATZENBACH. I said it was a technical point, Senator.

Senator ERVIN. It is about the most technical point I have ever encountered.

Attorney General KATZENBACH. I am sure that that hypothetical county would take advantage of the technicality and be out 6 months after the enactment of the act.

Senator ERVIN. Let me see what they have to prove. As a poor sinner, I am sure glad that the Lord allows more room for repentance than this bill would allow to the election official.

Now with regard to these States and these political subdivisions of States that have their literacy tests. First, any person acting color of law would be an election official; would he not?

Attorney General KATZENBACH. It would be, yes.

Senator ERVIN. That word "any" is a pretty broad word; is it not? It means one?

Attorney General KATZENBACH. It means what?

Senator ERVIN. One.

Attorney General KATZENBACH. Yes.

Senator ERVIN. Well, my State has 2,200 election precincts in it. It also has 600 election officials. I do not know about the other States, but under this bill a State could not possibly get out of this artificial box created by subsection 3(a), unless it can show that not a single one of the election officials in the entire State within a period of 10 years before the bringing of the suit had discriminated against a single person on account of race or color in denying him the right to vote.

Attorney General KATZENBACH. Senator, there are two points I would make on that. One is that they do not have to show that unless there is some evidence to come in before that. They do not have to cite and establish that no single person anywhere has ever discriminated against any other single person. As I said earlier, really all they have to do is come in and this is a fairly simple procedure. Until the Government goes forward and shows that they have reason to believe that there is discrimination, and the burden of going forward with proof—

Senator ERVIN. Excuse me. Show me anything that says the Government has to prove anything in its case.

Attorney General KATZENBACH. Senator, I think this law, like any other law, takes in the normal practices that go on in court.

Senator ERVIN. Oh, no, it reverses them. That is one of my objections to it. It turns them around. It requires the State or political subdivision to establish its innocence, complete innocence.

Attorney General KATZENBACH. Senator, if you were, as you were, a distinguished judge and a petitioner came in for a declaratory judgment and the petitioner came in simply with a affidavit of the Governor of the State, and said he knew of no instance of discrimination by any State official under color of law that had the effect of denying or abridging the right to vote within his State for a 10-year period, and the Government of the United States, as the defendant in this,

came in and offered no evidence whatsoever that there ever had been—I just put that case to you—they came in and did it. Would you not give them a declaratory judgment? I would.

Senator ERVIN. I have never heard of but one court acting like that. There was a justice of the peace down in my country who had just been appointed and who had never tried a case. The constable took these defendants over to be tried before this justice of the peace in a criminal case. The justice of the peace said, "Are you guilty or not guilty?"

They said, "Not guilty."

He said, "Go on home, if you are not guilty you have no business being here."

The constable said that he ought to get some evidence first, but he said, "No, they are not guilty."

I do not think that the district court is going to act like this, because they have to follow this law.

Attorney General KATZENBACH. If the court follows this law, and I have confidence that it would, in that case, there is evidence which has been put into that case which establishes that there has been no discrimination for a period of 10 years. There is no evidence in that case that indicates that there has been any discrimination. Now, how can the judge, with evidence that there has been none, and no evidence that there has been, decline to issue a declaratory judgment on the basis of the evidence before the court?

Senator ERVIN. I shall tell you why. This bill requires him to. This bill says that you do not get to court on this proposition. Section 3(a) says that if the Attorney General determines that on November 1, 1964, any test or device as a qualification for voting existed in a State or political subdivision of a State, and if the Director of the Census determines that less than 50 percent of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 percent of such persons voted in the presidential election of November 1964, then that State is put in the situation where it has to see the courthouse doors in its locality all nailed shut. The State has to come all the way to the District of Columbia in order to bring a suit. Now, I have difficulty understanding why the Department of Justice would draw up such an unreasonable bill as this. I think that they intended it to be more reasonable than it is. But what the bill says is different from your interpretation of this.

The Government does not have to do anything even after States or political subdivisions get to the District of Columbia. They have to pass all the courthouses that are nailed shut against them and come to the District of Columbia. Then they have to go into court and bring this suit, and then they are the petitioners, not the defendant. The Government is not required to prove a single thing against them.

Attorney General KATZENBACH. All that we require them to do, Senator, is to allege it.

Senator ERVIN. Oh, no, you have to allege it and the court has to prove it.

Attorney General KATZENBACH. They have to allege it. That is all they have to do. Then the court, on the basis of whatever evidence it has, makes the determination. There is no evidence to the contrary.

I do not see how they could fail to make the determination that would be required.

In fact, it seems to me that just on those pleadings, there could be a summary judgment without actually putting in any evidence, any witnesses, or anything more.

Senator ERVIN. Well, why—

Attorney General KATZENBACH. You can ask for a summary judgment on the pleading. They allege no discrimination, the United States has no evidence of discrimination—boom, summary judgement for the State or for the county.

Senator ERVIN. Then why should not the Department of Justice investigate first and not require people to journey 1,000 miles to make an allegation such as that which this bill requires them to make—

Attorney General KATZENBACH. They do not have to journey 1,000 miles. They can draft the paper and send it up to an attorney here in Washington and he can put it in for them.

Senator ERVIN. Well, they have to send it to the District of Columbia; otherwise they are deprived of the right of sovereignty; they are deprived of a constitutional right.

It says here that they have to come here and they have to bring the suit; they are the petitioner. They have to bring the suit.

Attorney General KATZENBACH. That is right.

Senator ERVIN. Then they have to allege that neither the petitioner or any person, not any single person, acting under color of law, has engaged during the 10 years preceding the filing of the action in acts or practices denying or abridging the right to vote for reasons of race or color. They have to come and allege that. Is it not a familiar legal rule that what you allege, you have to prove?

Attorney General KATZENBACH. But there is no evidence to the contrary. If the Government introduces no, and says it has no evidence to the contrary, I think you can get a summary judgment on the pleading.

Senator ERVIN. That is one of the bad things about this bill. The determination is made by an Attorney General.

Attorney General KATZENBACH. No, they are not contesting that, Senator. There is no determination by the Attorney General that they are contesting. What they are testing is the determination made by Congress.

Senator ERVIN. No.

Attorney General KATZENBACH. I do not think—

Senator ERVIN. Yes, they are. They would be contesting the presumption raised by a determination by the Attorney General that this State or political subdivision had a law providing for a literacy test.

Attorney General KATZENBACH. No, Senator, they cannot contest that they have a law. They are not permitted to contest that they have a law.

Senator ERVIN. You mean if they come up here and say they don't have a law that the Attorney General says they have, they still could not contest it?

Attorney General KATZENBACH. That is right, Senator. As I said earlier, I think the Attorney General can determine what laws they have. I think that is a truly ministerial act. I do not see any problems with that.

Senator ERVIN. But if the Attorney General makes that finding, then this law hits them with all its fury.

Attorney General KATZENBACH. But look at it, Senator, this way——

Senator ERVIN. Well——

Attorney General KATZENBACH. The Attorney General says they have a law. They do not have such a law. This act forbids them from having such a law. What the heck are they worried about?

Senator ERVIN. I would be worried about it, because if they happen to have less than 50 percent of their people registered to vote, or less than 50 percent of them voted in 1964, they would have their registrar supplanted by examiners. Then they must come up here to the District of Columbia and contest these determinations.

Attorney General KATZENBACH. All this law says is they do not have to—if they do have a test or device, that is suspended for the period of operation of this law, Senator. If they do not have such a test or device, what are they worried about?

Senator ERVIN. Which is 10 years.

Attorney General KATZENBACH. Which is 10 years.

Senator ERVIN. In other words, they cannot have their own registers.

Attorney General KATZENBACH. What you are talking about here is an Attorney General who determines that there is a test or device when there is not one. I would think that you could make a pretty big fuss about an Attorney General who would commit that kind of act.

Senator ERVIN. I do not want to argue with you about that, because I think you can read it. If one determination is made by an Attorney General that they have a literacy test or an understanding test——

Attorney General KATZENBACH. Yes.

Senator ERVIN. And if a second determination is made by the Bureau of the Census that less than 50 percent of the people of voting age are either not registered in November 1964 or did not vote in the presidential election of 1964, then they would be denied the right to use the literacy test from then on, unless they could come up here to the court in the District of Columbia and prove not only that they had not discriminated in the election of 1964, but they had no single election official in the county or State that had discriminated for 10 years.

Attorney General KATZENBACH. Yes, but we can certainly get rid of the first problem very simply, Senator. I will give you a list of those States that I believe on November 1, 1964, had illiteracy tests. You can put them out publicly and see whether any of those States deny that they have literacy tests. They come up and say they don't have literacy tests. If they do, it seems to me they have gotten over that hurdle because it is November 1, 1964, and we are rid of this. If there is going to be a fuss, this committee will know.

Senator ERVIN. I am not troubled about that. I am troubled that there is an inference drawn from the percentage of States having literacy tests. Certainly if these determinations are made, one by the Attorney General and one by the Bureau of Census, then this law covers them and they can't use that literacy test.

Attorney General KATZENBACH. That is right.

Senator ERVIN. Unless they come up here and show not only that they practiced no discrimination in the election in the administration of literacy tests, but they also have to show that no elec-

tion official in the State has engaged during the 10 years preceding the filing of the action in actual practice in depriving anyone of the right to vote for reasons of race and color. They don't even have to show that that denial has been on the basis of an improper administration of the literacy test, now, do they?

Attorney General KATZENBACH. I think that is clear, Senator.

Senator TYDINGS. Mr. Chairman, could I inject a question here?

Senator ERVIN. I yield for that purpose.

Senator TYDINGS. It seems to me that the question that Senator Ervin is getting at he is concerned with the fact that under the machinery as provided for in section 3 (a), (b), and (c) here that the presumption of the protection of the law is being extended to people, to the individual person who has been deprived of the right to vote under three separate civil rights laws, which laws were set up so that when a person was deprived of the right to vote and they went to court, the presumption always was in favor of the local officials having granted that person the right to vote, and as a result, because of the dragout and the constant delays and stays, these people have not had the right to vote, and really the issue comes down to whether or not the presumption here should be extended to the individual citizen for the right to vote and a slight burden placed upon the State in a situation which history has shown would indicate time and time again that people are being deprived of the right to vote because of their color, that a situation like that would require the State to do, to take some effort if they were to reject that presumption.

But basically it is a question of whether or not the presumption is going to act to protect the individual and his right to vote or whether or not the presumption is going to act to protect the administrators of the voting laws of States which we see from the facts have not administered the laws fairly.

Senator ERVIN. I appreciate the Senator from Maryland's efforts to explain my position but I must tell him that is not my position.

What I am objecting to is certain determinations raised in the presumption. You can't get away from the guilt that is attributed to you by showing that the presumption doesn't exist.

Attorney General KATZENBACH. Well, you can get away on that, Senator, by showing that the presumption doesn't apply. That is the whole purpose of 3(c). I think you make a good point, that the committee might wish to consider, that if the difficulty is that there is one instance of one person being denied a vote 10 years, the judge could come—the court could come under this, could read this section in such a way as to say that if that were proved, the literacy test within section 3(a), I think the committee could consider whether or not the meaning of this, or what it ought to be, might not be to show more than one isolated instance.

I wouldn't have any objection to showing more than one isolated instance. I would have objection to making that test one of shifting all of the proof again and all of the thousands of man-hours I think we go into to make a showing similar to what we now have to show in every voting county. If there was—if you wanted to exempt the one or two or three isolated instances of one person and to make the evidence have to establish that it was not an isolated instance with respect to one person, I would have no objection.

Senator HRUSKA. If the Senator would yield, if you would carry that through, then, in line 9, on page 3, you would strike the word "Act" and say "Any pattern or practice."

Attorney General KATZENBACH. I don't want the pattern or practice—

Senator HRUSKA. You want it your way but not the other way.

Attorney General KATZENBACH. I think this goes far. The pattern or practice requires a tremendous amount of evidence in that respect. I would say that after you have made all the presumptions that you have made in 3(a) that if you show that the right had been denied to substantial numbers of people, that would be sufficient.

Senator HRUSKA. That would require amendment, however, to the present language, wouldn't it?

Attorney General KATZENBACH. I think that it might, Senator, because—well, I think that a court here would make the finding even if there was—if there was one isolated instance of one registrar acting out of line against a Negro whom he didn't happen personally to like and that was the one instance in 10 years, and that I would think a court might say under that, that is not enough to throw the State or county within this test.

Senator HRUSKA. In which event he would be saying the law doesn't mean what it says and the law says any act. That is what it says and he would be then saying, the law doesn't say really what it says. The law is what I will say it says. Isn't that the upshot of that kind of situation?

Attorney General KATZENBACH. I wouldn't—

Senator HRUSKA. I don't want to be literalistic about it, but isn't that about it? And if you are going to give him an inch, why not 12 or 36 inches?

Attorney General KATZENBACH. About two, I think, Senator.

Senator ERVIN. I spent some time trying to discharge the functions of a judge and I don't know any way a judge can enforce a statute unless he enforces the statute as it is written. I don't know any way that anyone can secure justice in court if he has to depend upon notions that may in the judge's head rather than what is written in the law-books.

Attorney General KATZENBACH. I certainly agree with that, Senator, but may I say I do not believe this Congress or any Congress since 1789 has ever enacted a law which was so clear that no factual situation under it could create any difficulty for a judge.

Senator ERVIN. No; I agree with you on that, but Congress has rarely been called upon to enact a law which bears on its face the marks of having been written in such haste as this one.

Attorney General KATZENBACH. Senator, I—may I say a word for the draftsmanship of this bill?

Senator ERVIN. Absolutely.

Attorney General KATZENBACH. It wasn't written in all that haste. There were a lot of revisions that were made, as I think is true of almost every law that is enacted, that there are changes made in committee, changes made up to the last minute. Just because changes are made, just before the bill is reported, you don't say that the bill was drafted in haste.

Senator ERVIN. No.

Attorney General KATZENBACH. We had been working on a bill along these general lines since the middle of November to draft this. We have the benefit, as you know, as a number of very skilled, able attorneys who are also Members of Congress on both sides of the aisle and they considered this for many long hours, and I don't think that any of the people who participated in this believed at any time that it might not be capable of being improved by a distinguished jurist such as yourself.

There might not be things in it, there may be things that ought to be changed after the full hearing, that there may be ways in which the bill can be strengthened, made more effective, and there may be things in the bill which ought to be stated more clearly. But this is not because it was drafted in haste or carelessly or negligently or anything else. It simply isn't true, Senator.

Senator ERVIN. I am of the opinion that sometimes the old adage that too many cooks spoil the broth applies to drafting a piece of legislation. I don't get any comfort from that.

Attorney General KATZENBACH. I certainly wouldn't want to admit that too many cooks spoil the broth applies to drafting a piece of legis-

Senator ERVIN. But you have admitted that it might be well in two or three respects to change this bill so as to make its meaning clear, haven't you?

Attorney General KATZENBACH. Yes.

Senator HART. I would like a specific answer on that. I recall only two such suggestions and I wonder if my notes reflect—

Senator ERVIN. I said several. Two would be several.

Senator HART. Let's get specifically what has been agreed thus far.

Attorney General KATZENBACH. I said a definition, if there was confusion on political subdivisions, a definition of that might be there. With respect to the other point that Senator Ervin raised about whether or not this judgment was a judgment under the act, I thought it was clear as it was drafted. I thought the intent was clearly expressed here. I thought it was adequate, but the Senator I think did not on that point. I said on this point that I thought that the committee might consider whether or not the way it is drafted there with the possibility of one isolated instance, whether that would be sufficient in the judgment of the committee or whether they would want to set up more than making an exception, say, unless such instance is an isolated one, or something of that kind, to take care of that possibility, I think that is all that—

Senator ERVIN. That is all. Those three are all.

Attorney General KATZENBACH. We have gotten two.

Senator ERVIN. Those three, and two sentences on page 2. Political subdivisions, isolated instances, and about the 10 years of what the court—any court in the United States—

Attorney General KATZENBACH. Senator, on this last point, making it—on line 6 we refer to the allegation denying acts or practices, denying the—abridging the right to vote, and you could write the bill by saying if the court determines that neither the petitioner nor any person acting under color of law has engaged during such period in acts or practices denied.

Senator ERVIN. And wouldn't it be well as long as it deals with the language to let it say that in the first subsection—so the law pertains

only to such State or subdivision? Wouldn't this be better than leaving the language where it could cover the whole United States?

Attorney General KATZENBACH. I don't see how a registrar in the State of South Carolina or North Carolina—

Senator ERVIN. I don't either.

Attorney General KATZENBACH (continuing). Could act under color of law to deny somebody in Mississippi. He could only act under color of law in the State or county where he has the law to act under.

Senator ERVIN. That is the reason I wondered why you didn't say that.

Attorney General KATZENBACH. Because it says, Senator—

Senator ERVIN. No; it says—

Attorney General KATZENBACH. I mean how can he act—if he can't act under color of law in any place except where he is, why do we have to say within that place?

Senator ERVIN. A registrar in South Carolina can act under color of law in South Carolina. This says they have to allege that during the 10 years preceding the final action, no person—no person nor any person acting under color of law has engaged in the act or practice of denying or abridging the right to vote for reasons of race or color. I think it is implied that the person be in the State or the district affected, but it doesn't say that. It does show that not any person—

Senator JOHNSTON. I am going to turn over the gavel here to my good friend who is asking the questions, Senator Ervin. I think he will preside in a manner that will be suitable for the whole committee and I think he will be pleasing to the Attorney General.

We will meet tomorrow again at 10:30. I understand that the chairman will be there.

Thank you. I am going to ask you to take the chair.

Senator ERVIN (now presiding). They can't rebut this presumption by showing that there were no discriminations in the administration of the literacy test, can they?

Attorney General KATZENBACH. With respect to voting; yes.

Senator ERVIN. Now, let's go to section 4(a). In addition to abolishing the right of States to have literacy tests for a 10-year period, this bill would provide that if 20 people say that they are denied the right to vote under color of law by reason of race or color and the Attorney General believes that complaint to be meritorious, then he can call on the Civil Service Commission to appoint examiners.

Attorney General KATZENBACH. In those States or political subdivisions as to which determinations have been made under section 3(a). This doesn't—this implements, gives additional enforcement provisions with respect only to those areas that are within section 3(a).

Senator ERVIN. Now, this provision wouldn't come into effect under subsection A, section 3(a), unless those two determinations were made.

Attorney General KATZENBACH. That is correct.

Senator ERVIN. Now, both of these determinations relate to the past, don't they?

Attorney General KATZENBACH. Yes; they do.

Senator ERVIN. In other words, they refer to a past event which even the recording angel can't wipe out.

Attorney General KATZENBACH. That is right, sir.

Senator ERVIN. Yes. Don't you agree with me that the Constitution doesn't empower the Congress to exercise judicial functions?

Attorney General KATZENBACH. The judicial function is vested in the judiciary; yes.

Senator ERVIN. And don't you agree with me that Congress cannot pass an ex post facto law?

Attorney General KATZENBACH. Yes, Senator.

Senator ERVIN. And don't you agree with me that clause 3 of section 9 of article I of the Constitution prohibits Congress from passing a bill of attainder?

Attorney General KATZENBACH. Yes, it does, Senator.

Senator ERVIN. Well, now, going back to this question of judicial power, don't you agree that any determination which settles a question of fact or law, and which determines the rights of particular parties is a judicial function?

Attorney General KATZENBACH. No, sir, Senator.

Senator ERVIN. You don't.

Attorney General KATZENBACH. Senator, in 1964, in the 1964 Act which I think would be comparable to this, Congress made a judgment that the discrimination in places of public accommodation serving food that had traveled interstate commerce would be a burden upon interstate commerce. It made that judgment. That would be a burden. You expressed, I believe, some doubts about that at the time.

Senator ERVIN. Yes, and I—

Attorney General KATZENBACH. The Supreme Court upheld that nine to nothing and said that such a judgment could be passed by Congress, and it also went further than that and said it didn't even need an explicit finding so long as that was clearly the basis for the law and that they would not question in that decision—in that decision they said they would not question any judgment made by Congress so long as it was a reasonable, rational judgment, and I think this—the provisions of section 3(a) here and the judgment that said discrimination in places of public accommodation was a burden on interstate commerce are very similar kinds of judgments.

I believe the Court would treat them in the same way and I believe that the other bill was constitutional and I believe this is.

Senator ERVIN. Well, of course, we have a very peculiar interpretation of the interstate commerce clause. The interstate commerce clause says Congress can regulate interstate commerce. Interstate commerce is a movement of people, goods, or communications from one State to another, and, of course, in that case they do hold that a person that eats a meal within the borders of a State is in interstate commerce, or at least subject to the regulations on interstate commerce. But I have yet to see that the Congress has the power to regulate interstate commerce, from the begetting of children to the erection of gravestones at the graves of deceased people.

I share Woodrow Wilson's opinion, and that as expressed by Chief Justice Hughes, that Congress and the Federal system of government—

Attorney General KATZENBACH. It is a living Constitution, Senator.

Senator ERVIN. That part is dead. I am trying to see if there is any living part left.

Attorney General KATZENBACH. I thought this was comparable, Senator, because a similar kind of factual finding and similar power—
 Senator ERVIN. At first I wondered why you didn't model this bill on the interstate commerce clause since it covered anything from be-
 getting of children through the erection of gravestones to mark the
 graves of the dead. And I wondered why you didn't put in a pro-
 vision here in regulating elections if the voting machine or the paper
 on which the ballots were printed had ever moved in interstate com-
 merce. At first it puzzled me why it wouldn't come under the inter-
 state commerce laws.

Attorney General KATZENBACH. The reason was that Congress has
 such broad power under section 2 of the 15th amendment:

Senator ERVIN. Well, no. I think the reason you didn't bother with
 this on the interstate commerce clause is because you found that under
 this clause it would be very difficult to limit application of the court
 decisions. The bill would not only apply to States south of the Ohio
 River and east of the Mississippi.

Now, I would just like to read this into the record and let you
 agree or disagree with it; 11 American Jurisprudence, "Constitutional
 Law," section 202, page 904, reads:

"It has been said that where the inquiry to be made involves questions of law
 as well as fact, where the defense of legal right and where the decision may result
 in terminating or destroying that right, the power to be exercised and the duties
 to be discharged are essentially judicial.

Now, in making this determination, particularly that of the Bureau
 of the Census, that says that anybody, any State or political subdivision
 where less than 50 percent of the people of voting age voted in
 November 1964, isn't that a determination of fact on which the rights
 rest?

Attorney General KATZENBACH. Yes. It is the creation of a general
 standard like so much legislation to be applied in this instance. It
 is not a—I don't know what exactly—I don't know exactly where that
 appears in the American jurisprudence. You did give me the page but
 I am not familiar with all of American jurisprudence, Senator, but I
 thought that the thrust of what they were saying there was determina-
 tions as to a particular case which involved facts and determinations
 of fact and law was normally what was thought of as a judicial func-
 tion, and nobody would quarrel with that.

Senator ERVIN. Well, I didn't think so. Here is another thing I
 don't think anyone would quarrel with. I will read now from 11
 American Jurisprudence, "Constitutional Law," section 204, at the
 top of page 907:

"Broadly speaking, a judicial inquiry investigates, declares, and enforces
 liabilities as they stand on present or past facts, and the laws supposed already
 to exist. Legislation, on the other hand, looks to the future and changes existing
 conditions by making a new rule to be applied thereafter to all or some part of
 those subjects to its power.

That completes the statement.

Now, this case, this legislation looks to the past, doesn't it? I
 believe you admit it.

Attorney General KATZENBACH. Senator, this legislation looks to
 the present and an urgent present in order to deal with the situation
 that exists, has existed in the past. The situation has existed. It is

an attempt of this legislation—the attempt of this legislation is to cure that for the future.

Senator ERVIN. But this legislation can't go into effect except by virtue of a past event which can't be wiped out or obviated, isn't that true?

Attorney General KATZENBACH. It can be wiped out, Senator, after they have stopped discriminating for 10 years.

Senator ERVIN. After 10 years. In the absence of this legislation, a State would have a right to have a nondiscriminatory literacy test, wouldn't it?

Attorney General KATZENBACH. Yes, all literacy tests are nondiscriminatory as they are written. The difficulty is in their administration, Senator.

Senator ERVIN. Nevertheless, this would wipe out the literacy test even though the literacy test in words was absolutely nondiscriminatory, and was applied alike to people of all races, wouldn't it?

Attorney General KATZENBACH. Yes, it would.

Senator ERVIN. And it would do that on the basis of an event which occurred before November 1964.

Attorney General KATZENBACH. Yes, it would, Senator.

Senator ERVIN. Now, I maintain that this violates clause 3, section 1, of article I of the Constitution which says—

Attorney General KATZENBACH. Senator, may I point out the last time I testified here you were talking about the immigration bill.

Senator ERVIN. Yes.

Attorney General KATZENBACH. And you recall the 1924 immigration law based its quotas on existing populations within the United States.

Senator ERVIN. Yes.

Attorney General KATZENBACH. Those are past events.

Senator ERVIN. No; but that law looked rather to the future.

Attorney General KATZENBACH. So does this. This is going to make a tremendous difference in the future, Senator.

Senator ERVIN. That law didn't deprive anybody of any future right based on a past event.

Attorney General KATZENBACH. Yes.

Senator ERVIN. No. No. It laid down a rule to govern the future.

Attorney General KATZENBACH. And restricted people from coming into the country and laid down quotas based on population statistics which were preexisting.

Senator ERVIN. Mr. Attorney General, I suggest there is an awful difference. I don't use that word "awful" in the dictionary sense. I mean a wide difference between a law which merely puts in a privilege—which was never a right—of coming into this country as an immigrant, and a law which deprived States of their constitutional powers on the basis of a past event.

Attorney General KATZENBACH. This is an attempt also, Senator, to take away a privilege of discriminating which was never a right.

Senator ERVIN. But it does so by taking away a constitutional power to prescribe a literacy test. Now, this clause 3 of section I of article I says:

No bill of attainder or ex post facto law shall be passed.

I know you are familiar with the case of *Cummings v. the State of Missouri*. That is the case in which the State of Missouri adopted a

constitution that said a man couldn't practice a profession, even that of being a minister of the Gospel, calling sinners to repentance, unless he would take an oath that at no time in the past had he adhered or given aid or comfort to those who had engaged in acts of hostility against the United States. And the Supreme Court held in *Cummings v. the State of Missouri*, in which is reported 71 U.S. 277, that provision was unconstitutional, violating clause 3 of section 9 of article I, both as an ex post facto law and also as a bill of attainder.

Attorney General KATZENBACH. Yes.

Senator ERVIN. And it said this:

Under the form of creating a qualification or attaching a condition—

This is a headnote, very clear—

the States cannot, in effect, inflict a punishment for a past act which was not punishable at the time it was committed. Deprivation or suspension of any civil rights for past conduct or punishment for such conduct; a bill of attainder is a legislative act which inflicts punishment without a judicial trial.

Now, under this bill, under section 3 clause of subsection 8, the States could be deprived of the power to exercise their constitutional authority to prescribe literacy tests on the basis of past events which occurred in 1964 which they couldn't possibly escape.

Attorney General KATZENBACH. Senator, as the headnote in that case said, assuming that that provision is applicable to States and political subdivisions, there is no punishment involved in this, and secondly, the conduct in this case we are seeking to get rid of is not conduct that was legal at the time it was committed. Conduct that we are trying to get rid of in this instance was conduct which was in violation of the Constitution of the United States. That has been on the books for 95 years and we didn't say any act in the past 95 years. We just say act in the past 10 years. You had 85 years to get rid of it. And those—that is quite a distinction between this and that case, it seems to me, because you get out from under the application of this formula, you show that there hasn't been this discrimination in voting. You haven't been denying and abridging. And in this instance the denial and abridgment as is described in these terms is in the same words as the 15th amendment. That was not conduct which was permissible at the time that it occurred. It is conduct that hasn't been permissible for 95 years.

Senator ERVIN. Well, don't you agree with me that in construing the Constitution it is the duty of a court to give these provisions of the Constitution a meaning rather than using one provision of the Constitution to destroy others?

Attorney General KATZENBACH. Yes, of course. Of course. You have given a meaning. There is nothing in this law that is destroying that right of States that haven't abused that right. How can you take the position that because States can give the qualifications, they can use that provision to violate the 15th amendment? You don't take that position.

Now, I say if they have been doing this, and here is a criteria for setting it up, and if they can show they haven't, they are out, but if they have been doing this, effective enforcement of the 15th amendment has to suspend that right for a limited period of time in order to cure that situation, and that Congress says if we are going to ever enforce the 15th amendment—we have tried in other ways, more

moderate ways to do it. It has been on the books for 95 years. For the last 8 years there has been a law that attempts to implement it. That law has been amended once. It has been amended twice, and finally Congress says, and I think Congress should say, the only way of enforcing the 15th amendment, the only practicable way is to get rid of this possibility and to get people voting in accordance with their rights and to get rid of discriminatory use of literacy tests which has been the big problem that we face.

I don't take the view, Senator, that this bill is going to get rid of every single bit of racial discrimination in voting in every single State of the country. If I could draft a bill that would do that, I would draft it. But it is going to get rid of the problem in those areas which have been discriminating and discriminating and discriminating and have been doing it for a long period of time.

Senator ERVIN. It is designed to deprive certain States of their constitutional power, under section 2 of article I of the original Constitution and under the 17th amendment, to prescribe the qualifications for voting insofar as they relate to the power to prescribe a literacy test or an understanding test.

Attorney General KATZENBACH. Because that right has been used in an unconstitutional fashion to deny and abridge the rights of Negroes to vote.

Senator ERVIN. It undertakes to do that by declaration of Congress to the effect that certain past events constitute a proof that certain States or counties in States have violated the 15th amendment.

Attorney General KATZENBACH. Which is rebuttable.

Senator ERVIN. Which is rebuttable by something which can't be proved—which cannot be rebutted by proving the untruth of the presumption.

Attorney General KATZENBACH. If you mean by proving the untruth of census figures, that is correct. But you can get—

Senator ERVIN. Yes.

Attorney General KATZENBACH. Why would we want litigation about the census figures? Don't we want litigation about whether or not they have discriminated? Isn't that the heart of the matter? Isn't that related to the 15th amendment?

Senator ERVIN. That is not what I am objecting to. I am objecting to an act of Congress which passes a judgment of condemnation upon States and their subdivisions on the basis of conduct which occurred in 1964.

In other words, I think that the power to condemn particular States or subdivisions of States is a judicial power which can only be exercised in a court proceeding. That is my objection to this bill.

Now, in the *Cummings* case, the Court said that a bill of attainder is a legislative act which affixed punishment without a judicial trial. This legislation inflicts punishment for a past event without a judicial trial upon these 6 States and upon 84 counties in my State. It deprives a State or political subdivision of the right of control and the right to use a literacy test unless it can come in and prove that it not only is not guilty of discrimination in 1964, but it has to prove there was none ever in the past 10 years. And this case also says at page 324:

These bills—

That is, bills of attainder—
may inflict punishment absolutely or may inflict it conditionally.

And given the most lenient interpretation, this bill condemns the States according to the interpretation you place on it yourself, at least initially, because they lose the power to administer a literacy test unless they can come in and show that they have been lily pure.

Attorney General KATZENBACH. That is right.

Senator ERVIN. In this field for the past 10 years.

Attorney General KATZENBACH. I think that is proper, Senator.

Senator ERVIN. I know you do. Otherwise I do not think you would—

Attorney General KATZENBACH. Thank you.

Senator ERVIN (continuing). Be here. But the people thought it was very proper in Missouri when they wrote into the Constitution that a man could not even call repentant sinners to the promises of the Gospel unless he was able to take an oath that he had never adhered or given aid to anybody that manifested hostility to the United States. They thought that was quite proper.

Attorney General KATZENBACH. Well, I wouldn't think that that case would have run afoul if they talked about prior illegal conduct. I think the point of that was that prior conduct hadn't been made unlawful, hadn't been forbidden by law, and now they were past conduct unlawful.

Now, we are not doing that here, Senator. That past conduct has been unlawful for 95 years.

Senator ERVIN. What you are doing there is letting an unlawful act be manifested by the fact that less than 50 percent of the people of voting age vote.

Attorney General KATZENBACH. With an opportunity to show that that isn't for reasons of discrimination.

Senator ERVIN. A State has no control over who is going to vote. I do not know that thing that purports that the voting laws of the United States—

Attorney General KATZENBACH. Senator, they have been discriminating. They come into court and they are out from under this act and the test on discrimination is if they haven't violated—the people acting under color of law, State and local officials—haven't violated the 15th amendment, they are not covered by this act.

Senator ERVIN. They are covered by this presumption, even though the presumption is not true. If they violated the law in one instance during the past 10 years, long before 1964, they cannot get out from under it, and once they are under it, they cannot get out for 10 years, even though they bring forth fruits in the performance of repentance, in the words of the scripture.

Attorney General KATZENBACH. Senator, I think that where there has been prior misconduct and that has been shown, I don't see any difficulty to saying you have to serve a little period of penance here.

Senator ERVIN. Well, also I call attention—

Attorney General KATZENBACH. I will tell you, if some of the States repealed their literacy tests tomorrow, I wouldn't believe it was done in order to stop discriminating. I think it would be done because they had a new device. I am not referring to your State.

Senator ERVIN. I hope not because the Supreme Court of the United States in a unanimous opinion in 1959 upheld the State, my State literacy law.

Attorney General KATZENBACH. Yes. The Court in that case, Senator, also made rather careful note of the fact that if literacy tests were in violation—used in violation of the 15th amendment—it might be quite a different proposition.

Senator ERVIN. I will agree with that. I do not—but it has to be shown by proof in the court case.

Attorney General KATZENBACH. Or by legislative determination with an opportunity to come out from under it, either one is appropriate. One works and the other hasn't.

Senator ERVIN. In *Cummings v. The State of Missouri*, the court defined an ex post facto law as one which imposes a punishment for an act which was not punishable at the time of commitment or imposes additional punishment to that prescribed or changes the rule of evidence by which less or different testimony is sufficient to convict than was then required.

Now, a State or political subdivision of a State was not subjected to the punishment of being deprived of their power to prescribe and administer literacy tests by the fact that less than 50 percent of their people of voting age failed to vote in the presidential election of 1964, is not that so?

Attorney General KATZENBACH. No, but this is not a punishment, Senator. This is not a punishment.

Senator ERVIN. It is a punishment.

Attorney General KATZENBACH. It is an effort to implement the 15th amendment.

Senator ERVIN. Well, is it not a punishment to a man to deprive him of a right? Isn't it a punishment for an act of Congress to deprive a man of a right?

Attorney General KATZENBACH. In the *Cummings* case I agree with what the Court did; yes, Senator.

Senator ERVIN. You will certainly agree with me on the proposition that a State did not lose its power to prescribe and administer a literacy test in November 1964 by the mere fact that less than 50 percent of the people residing within the State of voting age failed to vote?

Attorney General KATZENBACH. Nor does it under this law because they can establish here that they have not been in violation of the 15th amendment. If they so establish, they are not governed by these provisions.

Senator ERVIN. Well, they are certainly governed by these provisions unless they can carry that tremendous burden of proof put upon them.

Attorney General KATZENBACH. There isn't a word here, not one word in the statute about burden of proof.

Senator ERVIN. It implies that you have got to establish that to carry the burden of establishing what you have to allege. Old lawyers put it you had to have both allegator and probater, did you not? You are too good a lawyer to dispute that.

Attorney General KATZENBACH. We have been over that once, Senator, as to what that means. I don't think I could really say anything different than what I said before.

Senator ERVIN. Back in November 1964 the laws of evidence did not allow you to prove violation of the 15th amendment by showing that less than 50 percent of the people of voting age in a certain State, certain subdivision failed to vote.

Attorney General KATZENBACH. No; Congress did enact that kind of provision, had not enacted that kind of a provision then.

Senator ERVIN. On this point, on the question of the bill of attainder, I am going to cite *United States v. Lovett*, in which the Supreme Court said that a bill of attainder—and this was reported in 328 U.S. at page 303:

A bill of attainder is a legislative act which inflicts punishment without a judicial trial.

Attorney General KATZENBACH. Yes. I remember the case.

Senator ERVIN. That was the case in which the Congress passed an amended statute so as to provide that no part of an appropriation could be used to pay the salaries of certain people——

Attorney General KATZENBACH. Yes.

Senator ERVIN (continuing). Who allegedly were charged with subversive activities.

Attorney General KATZENBACH. Yes, sir.

Senator ERVIN. In other words, Congress gave as a reason for denying the use of this appropriation to pay the salaries its finding that these men were guilty of subversive activities or alleged subversive activities.

Attorney General KATZENBACH. I don't recall any provision in that that allowed any people that came within it to come in and establish that they had—I don't remember the law. Maybe that was in there, Senator. I don't think it was.

Senator ERVIN. I read from pages 316 to 317. 'The section of the law which did that was section 804.

Section 804 thus clearly accomplishes the punishment of named individuals without a judicial trial. The fact that the punishment was effected through an instrumentality of an act specifically cutting off the pay of certain named individuals found guilty of disloyalty makes it no less stalwart or effective than it would have been done by an act which designated the conduct of discrimination. No one once claimed that Congress would have passed a valid law stating that after investigation it had found Lovett, Dodge, and Watson guilty of the crime of engaging in subversive activities, defined that term for the first time and sentenced them to perpetual exclusion from any Government employment.

Section 804, while it does not use that language, accomplishes that result. The effect was to inflict punishment without the safeguards of judicial trial and determination by no previous law or fixed rule. The Constitution declared that this cannot be done either by a State or by the United States. Those who wrote our Constitution well knew the danger inherent in special legislative acts which take away the life, liberty, or property of particular named persons because the legislature thinks them guilty of conduct which deserves punishment.

Skipping over to page 318, when our Constitution and Bill of Rights were written, our ancestors had ample reason to know that legislative trials and punishments are too dangerous to exist in the Nation of free men they envisaged, and so they proscribed the bill of attainder.

Despite my respect for your opinion, I think this bill constitutes a bill of attainder as it deprives the States, certain States and certain counties of certain States which are defined in terms by the act itself, and election officials in those States, and counties, of certain

powers vested in the States and political subdivisions of the States. It does this without a judicial trial, and furthermore, it does this on the basis of a fact completed in the past. It does it on the evidence which would not have been sufficient at the time if the act was accomplished in the past.

I will not labor that point any more.

Attorney General KATZENBACH. I shouldn't let my silence indicate that I agree with you, Senator; I do not.

Senator ERVIN. I certainly would not infer that from your silence.

Attorney General KATZENBACH. Thank you, Senator.

Senator ERVIN. Even if I found your silence were recorded by the Bureau of the Census.

Under section 4(a), if these 20 people filed this complaint with the Attorney General and the Attorney General believes such complaint to be meritorious, he can cause the Civil Service Commissioners to appoint these examiners, can he not?

Attorney General KATZENBACH. Yes.

Senator ERVIN. The Attorney General has to believe this but he does not have to have any reasonable grounds, does he?

Attorney General KATZENBACH. No, Senator; in fact, paragraph 2 of that is even broader.

Senator ERVIN. Yes; that is what I thought. I was coming to that.

Attorney General KATZENBACH. I thought you were, Senator.

Senator ERVIN. Yes. It is dangerous to let the rights and the powers of the States or political subdivisions depend upon a belief in an Attorney General's head, is it not?

Attorney General KATZENBACH. Yes, Senator, but what is happening here is a very simple thing, really. It is the appointment of examiners because there was something no Attorney General, it seems to me, would want to do. He is doing that because the State registrars for some reason or another are not performing their duties under the law. So that all that happens within the State is that people who ought to be registered are registered within the State and that is all this act sets up.

There is no punishment to the State. There is no deprivation of any rights on the part of the State. This is merely just an additional burden to the Federal Government, really, but it is a method of insuring that this happens.

The point, Senator, that I tried to make throughout my testimony is really that the alternatives have been tried. If you want to say this judgment of the Attorney General has to go to trial, and has to be tried, then it is going to be tried, and there is going to be evidence; there are going to be delays; there are going to be appeals, and all for what? So that people can vote in another election.

Senator ERVIN. Up to this point, this bill has looked to the past.

Attorney General KATZENBACH. Yes.

Senator ERVIN. Its provisions have been predicated entirely upon what happened in the past. Now for the first time this bill looks to the future and it vests in one man, the occupant of one office; namely, that of the Attorney General, the power to deprive States or political subdivisions of States of the right to name their own election officials in effect.

Attorney General KATZENBACH. No; they can name their own election officials and those election officials can be operating. No; we don't deprive them of that at all.

Senator ERVIN. It provides—

Attorney General KATZENBACH. Just helps them with it.

Senator ERVIN. Once there is a complaint signed by 20 people, given the right for certain charges, it empowers 1 man on the basis of his belief, which is not required to be based on anything—the power to take and appoint people to supersede in part the powers of State and local election officials; does it not?

Attorney General KATZENBACH. I wouldn't use the word "supersede," Senator. Perform those functions of registration, yes.

Senator ERVIN. I said supersede in part.

Attorney General KATZENBACH. Parallel the action that they are taking.

Senator ERVIN. Put it another way. To reverse them.

Attorney General KATZENBACH. To reverse them?

Senator ERVIN. To reverse their action.

Attorney General KATZENBACH. If it could result—it could result in the reversal of their action if they denied 20 people and, on that basis, a Federal examiner was appointed. If a Federal examiner, examining those 20 persons, found that those same 20 persons did possess necessary qualifications to be registered, it would result in a reversal. But, of course, if he found out at that point that the registrar, the State registrar, had been absolutely right with respect to those 20 persons, they wouldn't be registered. It doesn't necessarily reverse them.

Senator ERVIN. But those 20 people do not have to prove the truth of the charge at all. There is no provision for this whatever.

Attorney General KATZENBACH. That is right.

Senator ERVIN. No provision to seeing whether that charge is correct.

Attorney General KATZENBACH. A little bit. The Attorney General—

Senator ERVIN. Almost none.

Attorney General KATZENBACH. The Attorney General has to believe they are meritorious.

Senator ERVIN. The Attorney General has to have a belief in his mind but he does not have to have any reason for that belief in addition to an unsupported and unproved allegation of these 20 people.

Attorney General KATZENBACH. I don't know what your experience with Attorneys General has been. Mine has been that they do want some facts on that and I would suppose they would find them.

Senator ERVIN. This does not apply to you, but years ago they used to have a Postmaster General who used to be the chief political adviser to the administration, which was all right because his duties were rather neutral in nature. About all he had to do was read the postal cards. But the Attorney General has to administer justice and until you became the Attorney General it was generally reputed in previous administrations, both Republican and Democratic, that the chief political adviser to the President was the Attorney General. I think this was unfortunate because I do not think any person at all that is

charged with impartial administration of justice should be looked upon as a chief political adviser to anybody.

But anyway, we agree here that if these 20 people make a charge, the charge does not have to be proved?

Attorney General KATZENBACH. That is right.

Senator ERVIN. If the Attorney General believes the charge is meritorious, whether he has reason or not for such belief, he can call on the Civil Service Commission to appoint these Federal examiners.

Attorney General KATZENBACH. That is right.

Senator ERVIN. Or he does not even have to believe it, does he?

Attorney General KATZENBACH. He has to make a judgment that he thinks it is otherwise necessary.

Senator ERVIN. In the second alternative he does not even have to have any complaint from 20 people, does he?

Attorney General KATZENBACH. That is right.

Senator ERVIN. If he just has an opinion that the appointment of examiners is otherwise necessary to enforce the guarantees of the 15th amendment, then the Civil Service Commission is required to appoint them, is it not?

Attorney General KATZENBACH. That is right.

Senator ERVIN. He can just reach up into his judgment and pluck any reason whatsoever for that second alternative which is satisfactory to him.

Attorney General KATZENBACH. Yes; he could.

Senator ERVIN. And it expressly provides here in section 4(b) that no power on this earth can review his belief or his judgment.

Attorney General KATZENBACH. That is right.

Senator ERVIN. It says right here in plainest English, a determination or certification of the Attorney General or the Director of the Census under section 3 or 4 shall be final and effective upon publication in the Federal Register.

Attorney General KATZENBACH. That is right.

Senator ERVIN. That even makes the Attorney General's decision independent of the judgment of the Almighty, much less that of the Controller, does it not?

Attorney General KATZENBACH. I would hope it would still be subject to the Almighty, Senator.

Senator ERVIN. It is unreviewable, yet, on that judgment, the Attorney General can have Federal examiners come in and usurp to some extent the power of State officials—election officials—to pass on the qualifications of voters.

Senator ERVIN. Despite my deep affection and profound respect for you, I am not with you myself. I am not the person to give you all that power.

Attorney General KATZENBACH. Thank you for the respect.

Senator ERVIN. Because I test the law not by what—

Attorney General KATZENBACH. At least the section is clear. We agree about what it means.

Senator ERVIN. I test the wisdom of the law not upon what a good man can do with it, but what a bad man can do with it, and I am just not willing to give any man ever born on this earth—I would not even trust myself with that much power.

Attorney General KATZENBACH. Senator, there are so many ways in which any Attorney General inevitably possesses so much more power than is given by this section in so many respects. This is——

Senator ERVIN. I think they have been given too much. That is what I think about it.

Attorney General KATZENBACH. This is——

Senator ERVIN. In most instances the Attorney General is given power which is subject to review by the courts but under this bill there is no review by the courts. So far as the affairs of this earth are concerned, it is not even reviewable by the Almighty.

Attorney General KATZENBACH. The consequences of it, Senator, are very modest.

Senator ERVIN. What did you say?

Attorney General KATZENBACH. The consequences are very modest. It merely means that Federal examiners are performing functions of registering people.

Senator ERVIN. It may be, Mr. Attorney General; it may be very modest for the Federal Government to step in and supersede the States in a field in which the States certainly have vast constitutional powers. But now that is being determined on the basis of a belief or judgment which is not subject to review by anybody, and I think that is quite a bit of power.

Attorney General KATZENBACH. You know, this particular provision for registering people in this way, you could do it anyhow if you wanted to. It just never has been done, but I would suppose that the Federal Government possessed the power in any State to appoint Federal examiners for Federal elections in any event.

Senator ERVIN. Yes.

Attorney General KATZENBACH. And doing that they would be passing on the State qualifications in Federal elections in any event.

Senator ERVIN. Yes. I would much prefer that instead of singling out six States and a few counties in one-third of my State for a bill which is to apply to them and not to the rest of the people in the United States. I am a great believer in the principle that uniform laws should be uniform.

Attorney General KATZENBACH. So am I, Senator.

Senator ERVIN. This provides that the Civil Service Commission shall upon as many examinations as it may deem appropriate, prepare and maintain lists of persons eligible to vote in Federal, State, and local elections.

Certainly the Federal Government could not just pass a law and say that the Federal Government is going to supplant States in the administration of State and local elections, could they?

Attorney General KATZENBACH. It could not except under the 15th amendment.

Senator ERVIN. Well, it cannot do it under the 15th amendment, can it? They cannot go any further——

Attorney General KATZENBACH. Oh, yes.

Senator ERVIN (continuing). Than necessary to prevent discrimination.

Attorney General KATZENBACH. It can go as far as Congress judges it to be necessary to prevent the discrimination. If the means are reasonable and appropriate, they could take it and the judgment of

Congress in that respect I think would not be reviewed, be questioned in court.

Senator ERVIN. Rather vast power. Maybe the best way to do it would be to provide for the execution without trial of State election officials that violate the 15th amendment.

Attorney General KATZENBACH. That could not be done, Senator.

Senator ERVIN. Fortunately the Constitution has got provisions in there.

Attorney General KATZENBACH. That is right. But, of course—

Senator ERVIN. Furthermore, it provides that they would have to be tried in the State where—in the district where the crime is alleged to have been committed.

Attorney General KATZENBACH. Right.

Senator ERVIN. And I am just curious why. Certainly that ought to be the spirit of a fair trial because trials at the place where the matter is being investigated have the benefit of the testimony of local inhabitants without great trouble. I wondered why those who drafted this bill thought it was necessary to nail shut every courthouse door in the United States except the court that opens in the District of Columbia, the U.S. District Court in the District of Columbia.

Attorney General KATZENBACH. Well, they thought it was a good provision, Senator, because it brought into one district the determination of like matters, and enabled that district to look at similar cases. Otherwise you would have been split with a number of judicial districts that have been set up elsewhere. We thought it was useful to have it done in one district, reviewed, be available to the Supreme Court. We did not believe that it was a great burden on States or political subdivisions to come here into the District of Columbia to make their proof here.

Senator ERVIN. Well, I cannot—

Attorney General KATZENBACH. I think just the fact that this could be decided in one place at the seat of government seemed to us a good way of doing it.

Senator ERVIN. Well, would not that be about equally as good for other provisions, all other Federal laws, to put them all under—

Attorney General KATZENBACH. Oh, I think we would have too many judges here. I don't think that—

Senator ERVIN. Well, you do realize the difficulty of bringing witnesses distances of anywhere from 800 to 1,000 miles to a court, do you not?

Attorney General KATZENBACH. Yes.

Senator ERVIN. It is a very expensive proposition.

Attorney General KATZENBACH. Yes.

Senator ERVIN. And do you not agree with me that there is no provision in this bill under which even if they come up here, 1,000 miles, then the cost of witness fees would be taxed against the Federal Government?

Attorney General KATZENBACH. No. That is true, Senator. There is no provision of that kind. There is no provision in the existing law which taxes the States with the expenses of the Federal Government even when we win our cases, traveling a great distance to do it.

Senator ERVIN. Well, do we not ordinarily tax the witness fees in the Federal court against the losing party ordinarily?

Attorney General KATZENBACH. Not when it is a State. We don't get any costs, not the costs of the trial. We get the minor costs.

Senator ERVIN. I am talking about witness fees.

I hope you will not mind my disagreeing with you, but I do not think your explanation which requires you to put this in the District of Columbia is satisfactory. It seems to me that justice ought to be everywhere. I cannot see why this bill requires these people, these States, and these subdivisions, to come up here to the District of Columbia.

Attorney General KATZENBACH. Senator, we do that in a number of instances.

Senator ERVIN. The only instances I recall offhand are the instances where the suit can only be brought against a certain agency, where all the records are here. But in this case you are taking the trial away from the places where the records and witnesses are.

Attorney General KATZENBACH. Well, I was going to use an example of a number of commissions and agencies that make a rule and if you want to contest that you have to travel from any part of the United States to Washington for the hearing. With respect to that—and then it is reviewable again in the courts here.

Now, your records, the records of the railroad companies before the Interstate Commerce Commission, they have to bring all that this distance. They have to bring their witnesses all that distance. It is not an unusual provision.

Senator ERVIN. Well, the difference is the Interstate Commerce Commission. Rulemaking is entirely different.

Attorney General KATZENBACH. But the problem is the same. The people have to travel.

Senator ERVIN. I think it is entirely different because the rule has the effect and force of law, similar to an act of Congress.

Attorney General KATZENBACH. Yes.

Senator ERVIN. And there cannot be a different rule in every place in the country. There must be a uniform rule that applies to the entire country.

Attorney General KATZENBACH. Yes.

Senator ERVIN. It operates as a rule of law and has to be uniform for that reason. But this question of the guilt of various States, various counties and States, ought to be tried where the witnesses are available. Instead of that they have to come up here to the District of Columbia.

Senator HART. Will the Senator yield for a comment that I know is one that he will not agree with.

Senator ERVIN. I will be glad to yield for a comment.

Senator HART. It is probably a lot easier for some of the States to come up here than it is for some of their own citizens to walk a block to their own court.

Senator ERVIN. Well, that is—

Senator HART. Highly emotional, irrelevant, and not to the point? No, it is not.

Senator ERVIN. I did not say that.

Senator HART. It puts it in focus, though, puts in focus why some of the safeguards are explicitly put into the bill.

Senator ERVIN. I do not know anything that impedes a man walking to the courthouse for the purpose of a lawsuit. I do not think we have ever had any demonstrations on that except the Communists in Judge Nieman's court. Apart from that I have never heard of anybody trying to obstruct the way to a courthouse. Then this bill comes along.

Senator HART. I had in mind a man going into a courthouse to register to vote.

Senator ERVIN. I thought that was what you were talking about but I am talking about going to the courthouse to get justice at the hands of a Federal judge and a man has to not only walk, he has to walk or hitchhike a thousand miles to get here under this bill.

Now, the judges—

Attorney General KATZENBACH. The States and counties have not to date had any hesitation about costs of trial. They seem to be willing to invest a good deal of money.

Senator ERVIN. Yes, but this is—

Attorney General KATZENBACH. Even though we eventually to date have won every single case that we ever had. The relief hasn't been very satisfactory but we eventually have won every single 1971(a) case we brought under the previous act that has been decided to date. I anticipate this would be continually true. They are very carefully prepared. I find the evidence overwhelming.

Senator ERVIN. Let's not say anything which will permit anyone to imply that the southern district and circuit judges are as bad as the southern election officials.

Attorney General KATZENBACH. All right.

Senator ERVIN. Is it the purpose of this bill to deny the district judge the right to try one of these cases by him or based upon—

Attorney General KATZENBACH. No. I think the three-judge court is surely appropriate. You are testing here a constitutional question—

Senator ERVIN. And I—

Attorney General KATZENBACH (continuing). On denial or abridgment. It goes into the 15th amendment question and I think the use of the three-judge court is quite appropriate. I didn't mean to cast any aspersions by drafting it this way. I am sure you do not mean to cast any aspersions on the district court here by wishing it to go elsewhere.

Senator ERVIN. Not at all. Not at all. If I had been a trial lawyer I would like to try my cases where the witnesses are available and would not like to travel a thousand miles just to try a case which arises in a locality.

Now, I can certainly see the point where there would be some advantage to having the three-judge court but why could not the three-judge court sitting in Richmond, Va., or Charlotte, N.C., or Charleston, S.C., try a case with the same dispatch and with the same intelligence and the same integrity of thought and finding as a three-judge court sitting in the District of Columbia?

Attorney General KATZENBACH. I think that the three-judge court in the District of Columbia can try it with the same integrity, same dispatch, the same judicial temperament as the three-judge court elsewhere. We suggested the three-judge court here. We thought it was

desirable to bring all of these cases into effect in one district, one court, with direct appeal. This would be better than getting divisions possibly between three or four circuits in this regard. Here they could be heard at the same time and decided at the same time. And common standards used in applying the bill. We thought it was a pretty good provision, Senator.

Senator ERVIN. In other words, if a decision happened to be wrong, you want all the decisions to be wrong instead of some of them right.

Attorney General KATZENBACH. I think appeal to the Supreme Court—I think all of them will be right, Senator.

Senator ERVIN. Well, cannot you think of any better reasons than that? It seems to me from my experience as a trial lawyer that it is much easier to do justice where you have got questions of fact involved as well as questions of law in a community in the general area where the witnesses, the bulk of the witnesses reside. Do you dispute that as a general proposition?

Attorney General KATZENBACH. No, not as a general proposition.

Senator ERVIN. And the thought when they wrote the Constitution with respect to other matters, with respect to criminal trials, they gave a constitutional right for the man to be tried in the locality where the crime was committed, did they not?

Attorney General KATZENBACH. Yes, and this law does, too. The criminal provisions of this law, there is no question about that, Senator.

Senator ERVIN. There is no question about that, but the only reason is, at least, I will not say the only reason, but it had to be that way in this case—

Attorney General KATZENBACH. Yes.

Senator ERVIN. Because our forefathers, our Founding Fathers had enough discretion, they did not know about these three-judge courts in those days.

Attorney General KATZENBACH. No, they didn't. They wrote the Constitution—

Senator ERVIN. And they did not know anything about this extension of the powers of equity, did they?

Attorney General KATZENBACH. No.

Senator ERVIN. They did not have any concept about declaratory judgments, either.

Attorney General KATZENBACH. No; but when they did write the Constitution, they did say the United States could sue a State right here in the Supreme Court and the State could sue the United States right here in Washington in the Supreme Court. So we have the powers as far as States are concerned right now to bring them to Washington and sue them.

Senator ERVIN. That is right, and Alexander Hamilton, if I recall the Federalist correctly, said the reason we put the provision in there to give the Supreme Court authority to hear suits between States was because he thought it would be improper to try a State in a court of less dignity, but we now have got away from that. We handle States before the bar, before Federal courts just like we do common criminals, do we not?

Attorney General KATZENBACH. Not like we do common criminals. We have great respect—

Senator ERVIN. No; I agree. I take that back. The common criminal can get his case tried in the district where he lives or the District of Columbia, whereas under this bill the States would have to be tried in the court of the District of Columbia.

Attorney General KATZENBACH. The point was as far as the burden of bringing witnesses and doing all that, that was actually written into the Constitution as far as States were concerned.

Senator ERVIN. The common criminal also has to be proven guilty. Here the State or local division has to prove itself innocent.

Attorney General KATZENBACH. This isn't a criminal provision and—

Senator ERVIN. No, it is not.

Attorney General KATZENBACH. You keep talking about punishment and guilt and other terms that are usually identified with criminal law, and this is not.

Senator ERVIN. Do you not think you penalize a State or political subdivision of a State when you say that it is unworthy of being entrusted with the same powers to administer laws that all the other State of the Union do expect the few designated in this act?

Attorney General KATZENBACH. No, Senator. If we have reason to believe that those States have been in violation of the 15th amendment, then I think it is—you know, the point I made in my testimony earlier here really is that we are not asking the States to do anything more than they are doing right now. We are saying "Go ahead," and then they purport to be doing it. It is not a belief in literacy tests in some of the States. It is not the fact. There are a great many illiterates registered. They are not giving you a belief in illiteracy. They are giving it a right to discrimination, that privilege they can exercise in violation of the 15th amendment.

Senator ERVIN. That is an assumption that this act makes, this bill makes.

Attorney General KATZENBACH. A good deal—

Senator ERVIN. And also makes it with respect to 34 counties in North Carolina. I understood you to concede this morning that you have no evidence that 33 of those counties were engaged in discrimination.

Attorney General KATZENBACH. No present evidence of it, that is correct, Senator.

Senator ERVIN. Now, these people to be appointed Federal examiners are to be appointed without regard to civil service laws and the Classification Act of 1949, are they not?

Attorney General KATZENBACH. Yes, sir.

Senator ERVIN. That means they do not have to take any civil service examination, do they?

Attorney General KATZENBACH. That is right.

Senator ERVIN. And I notice that the bill is very careful not to provide, as the Civil Rights Act provides, that voting referees be residents of the State in which the laws are to be administered.

Attorney General KATZENBACH. It doesn't provide that, Senator. It would certainly be the intention of this administration to appoint people who were residents of the States. I am sure Mr. Macy would testify that that would be the view of the Civil Service Commission as well, but the reason it doesn't is one point and one point only.

In certain areas the performance of these functions by a local resident could make him extremely unpopular within that area. He could be subjected to social ostracism or threats or worse. That has happened, Senator. A number of our Federal judges simply applying laws they didn't write, but applying them fairly and honestly have received threats, threats on their lives, on their families' lives in various areas with respect to nothing more than decisions in voting cases.

Senator ERVIN. I hope I can get an absolution of the State of North Carolina from guilt in that.

Attorney General KATZENBACH. You surely can, yes, Senator. But that has happened. And the reason that wasn't put in, I believe, and there was a considerable discussion of that among those who drafted the acts, I think some differences of viewpoints on this, everybody agreed with the desirability clearly of having local residents because they can perform functions much more efficiently, much more effectively, and they know the people within the area, but I think that the reason that it wasn't in there was the thought that there might be an occasion where to ask a resident in the community, a longtime resident in the community, to perform this function would make it virtually impossible for them to carry on and to live in that community, and it was somewhat an act not of arbitrary power but really an act of compassion that gave that discretion to the Civil Service Commission as the bill is presently drafted.

Senator ERVIN. I am glad to have that explanation, because I do not want any inference drawn that this was put in there, that phrased like it is, that there might be a feeling that there are as few good men down here as there were in Sodom and Gomorrah.

Attorney General KATZENBACH. No. I have no question that people appointed under this act, presently Government employees, residents in the area, would carry it out fairly and objectively. The only question is what would happen to them if they did so.

Senator ERVIN. I hope to offer an amendment at some stage that would provide that these people should come from the area in which they act unless the Civil Service Commission finds that there are no men of intelligence and integrity in that area.

Attorney General KATZENBACH. It is not that. I hope in drafting that you would keep in mind the problem that I just raised, Senator.

Senator ERVIN. Now, after these examiners are appointed, they are going to examine applicants concerning their qualifications to vote. So to that extent they are going to take the administration's law, at least they are going to supplant or exercise supremacy over the State officials. Are they not?

Attorney General KATZENBACH. Yes. Of course. There is the challenge procedure here.

Senator ERVIN. Yes, but a man has to go almost as far to exercise the challenge if he wants judicial review, although he does not have to go to the District of Columbia.

Attorney General KATZENBACH. No; that is not—he doesn't have to go to the District of Columbia for that.

Senator ERVIN. No, just go to the court of appeals for the circuit.

Attorney General KATZENBACH. Yes.

Senator ERVIN. And if he happens to live in Brunswick County, N.C., which is a pretty long way from Richmond or Baltimore where the circuit court sits. However, sometimes when they want to sit in a very delightful place they do come down to Charlotte and Asheville, N.C., but most of the time it is somewhere else.

Now, there are two things the person alleges in the application. First, that he is not registered to vote. And second, that within 90 days of receiving his application, he has been denied under color of law an opportunity to register or vote, or that he has been found not qualified to vote by a person acting under color of law.

That second qualification does not require that he be denied the right to register on account of any literacy tests.

Attorney General KATZENBACH. No. There wouldn't be any literacy tests, presumably.

Senator ERVIN. The literacy test is all abolished.

Attorney General KATZENBACH. But, of course, that State official might still be applying literacy tests, using that—running up to it or against it—making the argument which has been thrown out time and time again—and people still make it—that since he is compelled by State law to do it, he has to do it.

Senator DIRKSEN. For the record, it is not abolished. It makes it suspended.

Attorney General KATZENBACH. Yes. That is right.

Senator ERVIN. That is the way men are suspended when they are hanged. And this is suspended for 10 years on account of conduct 10 years before.

Senator DIRKSEN. Yes, but anybody reading that record would say they have abolished the literacy test. We have not done anything of the kind.

Attorney General KATZENBACH. You are quite right.

Senator DIRKSEN. We have just suspended its application for cause.

Attorney General KATZENBACH. I stand corrected and I appreciate your clarification.

Senator ERVIN. Well, I do not want to engage in an exercise in semantics with my friend from Illinois but I say you have abolished it. This bill would abolish it for 10 years.

Attorney General KATZENBACH. I would like Senator Dirksen's language on that, suspend for 10 years, or a lesser period of time.

Senator ERVIN. Yes. Abolish or suspend, the State is deprived of the power for 10 years even though it is wholly nondiscriminatory in its provisions and even though it has the power under a decision of the court interpreting the second section of the first article of the Constitution, 17th amendment, to require a literacy test.

Attorney General KATZENBACH. I think we have been over that point before, Senator.

Senator ERVIN. I know we have.

Attorney General KATZENBACH. I think I expressed my disagreement.

Senator ERVIN. We are getting near the end of the day.

Now, this second provision can be waived, what the Founding Fathers said can be waived.

Attorney General KATZENBACH. Yes.

Senator ERVIN. And so the Attorney General can waive the requirement that he has been denied the right to register to vote.

Attorney General KATZENBACH. Within 90 days.

Senator ERVIN. And all he has to do in that case is show he is not registered.

Attorney General KATZENBACH. That is right.

Senator ERVIN. Well, there is no standard laid down here to determine when the Attorney General can or should waive that requirement. He does it at his unbridled discretion, does he not?

Attorney General KATZENBACH. Yes; that is correct. Would you like me to explain why that discretion was put in?

Senator ERVIN. I think it might be helpful.

Attorney General KATZENBACH. The reason for it was this: that we ran into this situation where all the applicants or all the Negro applicants were simply being turned down or where a registrar said "I am going to try the literacy test whatever the law provides here."

We thought it was pointless to require every single person that wanted to vote, wanted to register to vote, to demean himself in that manner of being turned down by a man who had said publicly, who was performing in a way that so indicated that he would not register that person to vote. So the provision as put in to deal with the situation where the State official, the State registrar simply wasn't about to register people and permitted the Attorney General under those circumstances to waive an allegation that the person attempted to register when that would be fruitless.

Standard could be put in that the requirement of the latter allegation may be waived by the Attorney General whenever he believed that it would be fruitless for the person to have applied for—sought the opportunity to register. I think that is what it means, anyhow.

Senator ERVIN. Well, we just have another illustration—

Attorney General KATZENBACH. And that would be unbridled discretion also.

Senator ERVIN. Yes, and we have another case where the Congress passes a law which says that the Attorney General nullifies a provision of law if he sees fit. In fact, it does not say he has to see fit but it gives him that power.

Attorney General KATZENBACH. Senator, I don't like, as long as I am in this position, having to make the determinations which you regard as unbridled. But frankly I don't know a different way of dealing with it except the way that we have attempted. To go into court all the time and running into all those delays—I think if you balance some discretion on the part of the Attorney General against repeated denials of the right to vote, people who are entitled to vote, it is better to let the Attorney General have a little bit of discretion and get some people voting.

Every election that goes past that vote is lost forever.

Senator ERVIN. Well, I think there are better ways of doing things. I am not opposed to enforcement of the 15th amendment—

Attorney General KATZENBACH. I know that.

Senator ERVIN (continuing). I propose before this thing is over to offer a substitute for the first part that I think is being practically as effective as this and would be far more applicable to local conditions and would also contain methods of fairly administering the constitutional provisions.

Attorney General KATZENBACH. I would like to add perhaps another reason why the Attorney General might waive that discretion. There may be some risk involved to a Negro going to register through his State registrar. We have two cases of assault in the State of Mississippi in that regard. One of them by a law enforcement official. Maybe both of them were. One was a registrar and one was a sheriff.

In one instance a Negro was beaten up by the butt of a gun, struck across the face, staggered out of the front of the building and was arrested for disturbing the peace.

Senator HART. That was part of a trip coming to the district court in the District of Columbia.

Attorney General KATZENBACH. Yes, it was, Senator.

Senator ERVIN. Well, I hate to have the Constitution of the United States destroyed because of the sins of anyone who beats up a man unjustifiably anywhere. I think that can be handled in a better way, however, than giving the Attorney General power which cannot be reviewed by anybody.

You have been testifying a long time. I am inclined to recess if it is satisfactory to you. We hope to finish tomorrow, Mr. Attorney General.

Attorney General KATZENBACH. Will we finish tomorrow, Senator?

Senator ERVIN. When I have to take the Democratic part and the Republican part and the administration, it requires a certain amount of exploring and elaboration and elucidation.

Attorney General KATZENBACH. I am available to you as long as you want me here as a witness.

Senator DIRKSEN. My friend from North Carolina is fully capable of taking on both political parties and the administration.

Attorney General KATZENBACH. I know that, Senator.

Senator ERVIN. I have found that both political parties and the administration do not have very much difficulty overrunning me and I get behind the Constitution for protection.

I am sorry that we have retained you as long as we have. Can you be back tomorrow?

Attorney General KATZENBACH. Yes, sir. I am available any time this committee wants me and even night sessions.

Senator ERVIN. Well, I think we are doing enough. Like the Scripture says, "Men love the days rather than the nights." I prefer not to go into night sessions.

We will take a recess and the committee will stand in recess until 10:30 tomorrow.

(Whereupon, at 4:55 p.m., the committee recessed to reconvene at 10:30 a.m., Wednesday, March 24, 1965.)

VOTING RIGHTS

WEDNESDAY, MARCH 24, 1965

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to recess, at 10:30 a.m., in room 2228, New Senate Office Building, Senator James O. Eastland (chairman) presiding.

Present: Senators Eastland, Johnston, Ervin, Fong, Hart, Kennedy of Massachusetts, Bayh, Tydings, Dirksen, Hruska, Scott, Miller, and Javits.

Also present: Joseph A. Davis, chief clerk; Palmer Lipscomb, Robert B. Young, and Thomas B. Collins, professional staff members of the committee.

Senator JOHNSTON. The committee will come to order. The Attorney General will be heard. I think he was being heard at the time we adjourned yesterday.

I think the Senator from North Carolina, Senator Ervin, was asking some questions. So you may proceed.

STATEMENT OF HON. NICHOLAS deB. KATZENBACH, ATTORNEY GENERAL OF THE UNITED STATES

Attorney General KATZENBACH. Mr. Chairman.

Senator JOHNSTON. Yes.

Attorney General KATZENBACH. I have some statistics here, some of which were introduced yesterday, and I have put them in a more orderly form, and I have asked some of the people to get more statistics on this. I wonder whether I could submit these that I have for the record and leave it open for more statistics of a like nature.

Senator JOHNSTON. You may submit those for the record and also bring the others at a later date, later time, there being no opposition to it.

Attorney General KATZENBACH. Thank you, sir.

(The material referred to follows:)

	Voting age population ¹	Total vote cast 1964 presidential election ²	Percentage of population ³	Number of registered voters in 1964 ⁴	Date	Percentage of population ⁴
Alabama ⁵	1,915,000	689,818	36.0	1,057,477	July 1964.....	55.0
Alaska	138,000	67,259	49.0	(⁶)		
Arizona ⁷	879,000	430,770	55.0	564,284	November 1964.....	66.0
Arkansas	1,124,000	560,427	49.9	633,663	January 1964.....	56.0
California ⁸	10,916,000	7,057,588	65.0	8,184,143	November 1964.....	75.0
Colorado	1,142,000	776,986	68.0	933,312	do.....	81.7
Connecticut ⁹	1,898,000	1,218,578	72.0	1,373,443	do.....	80.9
Delaware	283,000	201,320	71.0	245,494	October 1964.....	86.7
Florida	3,516,000	1,854,481	53.0	2,501,543	November 1964.....	71.0
Georgia ¹⁰	2,690,000	1,130,352	43.0	1,686,778	1964.....	63.0
Hawaii ¹¹	895,000	297,271	32.0	239,381	November 1964.....	26.6
Idaho	356,000	202,477	72.0	364,231	do.....	94.0
Illinois	6,356,000	4,732,841	74.0	5,334,676	do.....	87.0
Indiana	2,850,000	2,031,408	74.0	2,328,627	October 1964.....	93.0
Iowa	1,833,000	1,164,439	72.0	(⁶)		
Kansas	1,323,000	637,901	65.0	(⁶)		
Kentucky	1,976,000	1,046,105	53.0	1,000,000	April 1964.....	51.0
Louisiana ¹²	1,593,000	896,292	47.0	1,196,395	January 1965.....	63.0
Maine ¹³	681,000	390,966	65.0	622,236	Nov. 5, 1964.....	90.0
Maryland	1,966,000	1,116,457	56.0	1,410,281	October 1964.....	70.6
Massachusetts ¹⁴	3,390,000	2,444,798	71.0	3,721,466	November 1964.....	92.7
Michigan	4,647,000	3,203,102	69.0	3,383,730	April 1964.....	72.0
Minnesota	2,424,000	1,534,462	77.0	(⁶)		
Mississippi ¹⁵	1,243,000	409,146	33.0	559,000	January 1964.....	44.0
Missouri	2,396,000	1,799,879	67.0	(⁶)		
Montana	399,000	278,628	70.0	327,477	November 1964.....	82.0
Nebraska	877,000	584,154	67.0	(⁶)		
Nevada	244,000	136,436	55.0	163,475	do.....	67.0
New Hampshire ¹⁶	393,000	238,063	72.0	363,224	do.....	92.0
New Jersey	4,147,000	2,842,770	69.0	3,233,603	do.....	78.4
New Mexico	514,000	327,615	64.0	464,911	do.....	90.4
New York ¹⁷	11,330,000	7,168,263	63.0	8,343,430	do.....	74.5
North Carolina ¹⁸	2,763,000	1,424,453	52.0	2,400,000	March 1965.....	76.0
North Dakota	368,000	238,489	72.0	(⁶)		
Ohio	5,960,000	3,999,135	67.0	(⁶)		
Oklahoma	1,493,000	832,496	57.0	1,199,026	January 1965.....	82.0
Oregon	1,130,000	789,289	69.0	832,461	November 1964.....	75.0
Pennsylvania	7,080,000	4,418,668	63.0	(⁶)		
Rhode Island	668,000	390,078	60.0	472,659	do.....	82.0
South Carolina ¹⁹	1,330,000	524,748	43.0	772,572	September 1964.....	58.0
South Dakota	404,000	293,418	73.0	369,782	November 1964.....	91.6
Tennessee	2,232,000	1,144,046	51.0	1,628,525	February 1964.....	72.7
Texas	5,922,000	2,626,311	44.0	3,338,718	January 1964.....	56.3
Utah	522,000	401,413	77.0	448,463	November 1964.....	85.9
Vermont	240,000	183,099	68.0	209,225	do.....	87.0
Virginia ²⁰	2,541,000	1,042,267	41.0	1,311,023	October 1964.....	51.8
Washington ²¹	1,750,000	1,238,374	72.0	1,582,048	November 1964.....	90.0
West Virginia	1,053,000	792,040	75.0	1,065,429	do.....	102.0
Wisconsin	2,391,000	1,696,816	71.0	(⁶)		
Wyoming ²²	195,000	142,718	73.0	(⁶)		
Nationwide total.....	113,931,000	70,642,496	62.0			

¹ This is an estimate by the Bureau of Census as of Nov. 1, 1964, taken from a memorandum issued by the Department of Commerce, dated Sept. 8, 1964, No. CB-64 93.

² This column is based on figures supplied by official State sources to the Congressional Quarterly.

³ These figures are mostly based on the official reports of the various States, but in some cases do not represent the actual number of persons registered, due to the lack of effective purging of voters who have died or moved away or otherwise become ineligible.

⁴ These percentages are based on the voting age population as of Nov. 1, 1964.

⁵ These States use a test or device as defined by sec. 3(b) of the proposed Voting Rights Act of 1965. Idaho, which does not have a literacy test, has a "good moral character" requirement. Some of the literacy tests States also have a "good moral character" requirement.

⁶ These States do not have statewide registration.

⁷ This does not include Fayette County, which has approximately 2,400 registered voters.

*States which use a test or device as defined by sec. 3(b) of the proposed
Voting Rights Act of 1965*

State	Voting age population ¹	Total vote cast, 1964 presidential election ²	Percentage of population
Group A: ³			
Alabama.....	1,915,000	639,818	34
Alaska.....	138,000	67,269	49
Georgia.....	2,695,000	1,159,832	43
Louisiana.....	1,693,000	895,203	47
Mississippi.....	1,245,000	499,146	35
South Carolina.....	1,380,000	524,748	38
Virginia.....	2,541,000	1,042,267	41
Group B: ⁴			
Arizona.....	879,000	480,770	55
California.....	10,816,000	7,057,586	65
Connecticut.....	1,698,000	1,218,678	72
Delaware.....	283,000	201,320	71
Hawaii.....	895,000	207,271	62
Idaho.....	330,000	292,477	76
Maine.....	681,000	380,966	65
Massachusetts.....	3,290,000	2,844,798	71
New Hampshire.....	896,000	238,668	72
New York.....	11,839,000	7,156,263	63
North Carolina.....	2,738,000	1,424,968	62
Oregon.....	1,180,000	735,289	69
Washington.....	1,799,000	1,258,374	72
Wyoming.....	195,000	142,716	73

¹ This is an estimate by the Bureau of Census as of Nov. 1, 1964, taken from a memo issued by the Department of Commerce, dated Sept. 8, 1964, No. CB64-63.

² This column is based on figures supplied by official State sources to the Congressional Quarterly.

³ States in which less than 50 percent of the voting age population voted in the presidential election of 1964.

⁴ States in which more than 50 percent of the voting age population voted in the presidential election of 1964.

Senator ERVIN. Mr. Attorney General, I am very much interested in the editorial by the Wall Street Journal of this date, which undertakes to analyze your position on this matter, and I think it might be illuminating if I asked you some questions about it. It says:

Appearing before the Senate Judiciary Subcommittee Mr. Katzenbach made no claim the Constitution gives to the Federal Government the authority to set voting qualifications in all the several States nor did he cite any Supreme Court opinions to suggest that the Federal Government has such power.

Now, in view of that I would like to ask you, Do you take the position that the Federal Government has the right to set voting qualifications in any State?

Attorney General KATZENBACH. I don't take the position, Senator, that the Federal Government has the right simply to set voter qualifications. I think that remains with the States. I do take the position that the Federal Government has the right to enact statutes under section 2 of the 15th amendment which would implement those provisions; and I do take the position that on a proper record of past racial discrimination in voting, the Federal Government has the authority to suspend voter qualifications, or other tests and devices, which have been used in violation of the 15th amendment, and to impose upon those areas of the country which have done so in order to implement

the 15th amendment, a suspension of such tests and devices in order that people may be registered within their States, Negroes may be registered within those States on the same basis that, in fact, has been used for white voters.

Senator ERVIN. It states here that you did not cite any Supreme Court opinions to suggest the Federal Government has the power to set voting qualifications, and it says "He hardly could have."

This is what I want to direct your attention specifically to, for the very first article of the Constitution reaffirmed by the 17th amendment lays down only one qualification which the National Government insists upon; namely, that all voters qualified to vote for the most numerous branch of the State legislature must be qualified also to vote in any national election.

Do you quarrel with that principal?

Attorney General KATZENBACH. I think that is perfectly true as far as article I is concerned. I do think that the 15th amendment sets down another standard.

Senator ERVIN. Yes; they follow that with this statement—

Attorney General KATZENBACH. And I thought that I had cited at least the *Lassiter* case, and I thought I had read from the Supreme Court, to the effect that when they said literacy tests were proper for States to use that they also said in the same case that it was subject to the imposition of other constitutional powers.

Senator ERVIN. Yes; but is this not a correct statement of what the Constitution provides on this subject, that States can prescribe not only the qualifications of voters in State and local elections but they can also prescribe qualifications for voting in national elections subject to three conditions: First, that the qualification laid down by the States for voting in national elections must provide that the voters, persons eligible to vote in a national election, if they possess the qualifications prescribed by State law for electors of the most numerous branch of the State legislature—

Attorney General KATZENBACH. Right.

Senator ERVIN. The second limitation is that a State cannot deny or abridge the right of any person, any citizen to vote on account of his race or color as provided in the 15th amendment.

Attorney General KATZENBACH. Right.

Senator ERVIN. And the third is that a State cannot abridge the right of any citizen to vote on account of the sex of that citizen.

Attorney General KATZENBACH. That is right.

And our position, Senator, is that they have not merely violated the 15th amendment but they have also violated the provision which talks about qualification for the most numerous branch of the State legislature because they have, in fact, registered whites with no literacy qualifications at all while imposing literacy qualifications unfairly in the administration of that on Negroes, so they have actually been in violation of article I-2 as well as the 15th amendment.

Senator ERVIN. I want to add the fourth limitation, that no State can impose a poll tax as a prerequisite to voting in Federal elections since a constitutional amendment has recently been adopted.

Attorney General KATZENBACH. Yes.

Senator ERVIN. That statement of those four limitations on the power of a State to prescribe qualifications for voting is supreme, is it not—

Attorney General KATZENBACH. Correct.

Senator ERVIN (continuing). And those limitations are controlling on the Federal Government are they not?

Attorney General KATZENBACH. Yes.

If I were describing the full picture, Senator, I would add to it section 2 of the 15th amendment that Congress may enact legislation for the purpose of implementing the first section of the 15th amendment. You see—I think it is wrong. I think you have to look at this as an express power given to Congress. Congress was expressly given the power to implement the 15th amendment by legislation. So it is an express power given to Congress, and that is a very important point in terms of our constitutional justification.

Senator ERVIN. By that power it can adopt legislation to enforce the provisions of the 15th amendment and of the 19th amendment.

Attorney General KATZENBACH. Yes.

Senator ERVIN. Yes. But do you think that the Constitution gives Congress the power to determine by legislative enactment the guilt of a particular State or particular subdivision of the State on the question as to whether it violated the 15th amendment or the 19th amendment?

Attorney General KATZENBACH. I think that Congress can set down reasonable standards in that respect, and then in addition it makes it possible for a State to be out from under that by reasonable tests in the courts as to whether, in fact, that is fair or not.

Senator ERVIN. Isn't the only possible construction that can be given to section 3(a) of this bill is that Congress by the enactment of that section will be declaring that certain particular States which can be readily identified and certain particular counties in other States which can be readily identified have been guilty of violation of the 15th amendment?

Attorney General KATZENBACH. May have been.

Senator ERVIN. Has been.

Attorney General KATZENBACH. May have been, Senator.

Senator ERVIN. Well, it takes a—

Attorney General KATZENBACH. Because there is an opportunity for them to establish that they have not been.

Senator ERVIN. But it declares, in effect, that they have been guilty, that they will be deemed guilty of violation of the 15th amendment on account of the formula laid down in that section unless they can come into court and establish their complete innocence—

Attorney General KATZENBACH. That is correct, sir.

Senator ERVIN (continuing). Over a period of 10 years in the past.

Attorney General KATZENBACH. Yes; the amendment has been in effect for 95 years.

Senator ERVIN. If Congress has the power to run the period back 10 years it can run it back 95, can it not?

Attorney General KATZENBACH. I would suppose running it back 95 years would not be as reasonable as running it back 10 years, and I would think that the power of Congress was to make reasonable and appropriate legislation to enforce this. I would suppose that the court would, while giving the widest leeway to a congressional judgment of this kind, might say if you take it back 95 years you have gone too far, that if you take it back 20 years I think is probable.

Senator ERVIN. Now, your Department is going to have to argue cases arising under this—

Attorney General KATZENBACH. Yes.

Senator ERVIN (continuing). Although it will not have to journey very far to do it, since jurisdiction will only be exercised here. Just actually at what period in between the normal creation and the election of 1964 would become unreasonable?

Attorney General KATZENBACH. When you are talking in terms of particular years, Senator, it is almost impossible to say 14 years is reasonable, 14 years and 1 day is unreasonable, because you get into these gradations. I would say that 10 years was eminently reasonable. I would say that 40 years was quite unreasonable. And I would think that somewhere between 10 and 40 the law would be upheld. I think 95 years would just be too much.

Senator DIRKSEN. Would the Senator yield at that point?

Senator ERVIN. Yes.

Senator DIRKSEN. If I may say that this particular matter was rather thoroughly discussed in the many conferences that took place in my office, and one suggestion was it be made 15 years; other suggestions were made to cut it down. This is in the nature of a cleansing process, and I rather took the position that it ought to be a shorter time for the reason that it has to operate on the character of the State basis. In other words, there has to be some inducement for cleansing any election or any procedure or registration practice, and the inducement would be that they get out from in under the machinery set up in this bill a good deal sooner, and I may add that I did reserve on this particular point and will propose an amendment at the appropriate time. But the matter was thoroughly discussed in nearly every one of those conferences at the time.

Senator ERVIN. May I ask the Senator a question? Do you not believe that you should not have to go back 10 years to prove that someone was dirty and needs cleansing. Do you think there ought to be a provision here whereby a person can show they repented and are going to do right immediately in the future, that they ought not to be penalized on account of something that happened 10 years ago?

Senator DIRKSEN. Well, you have to keep in mind whether the practice has continued from that date to this, and also I think if you took only one election period and said they had given new evidence of good faith in cleaning up the matter that that would be enough for any reasonable person. Now, on that point you can argue, and it is a matter of personal judgment, but I did want the record to show that this thing did not capriciously get into this bill and it was discussed at length and reservation was made at that time.

Attorney General KATZENBACH. Could I add just a small point to that, Senator?

I agree with everything you said. If it occurred, as we indicated yesterday, 9½ years ago, they are only under this provision for 6 months.

Senator DIRKSEN. That is correct.

Senator ERVIN. That is not the way the other section reads.

Attorney General KATZENBACH. It reads that way to me, Senator.

Senator ERVIN. It doesn't to me. The English language seems to be rather plain. We can disagree on that. I read it to you yesterday.

Attorney General KATZENBACH. It says if you had done it in the prior 10 years, if the only incident of discrimination is 9½ years ago, if you wait 6 months and go in or if you go in now and they find the only evidence is 9½ years ago you are at perfect liberty to go back in when, so to speak, the statute of limitation has run on that and ask for declaratory judgment 6 months later, and I see now your argument against that is based on your reading of the last paragraph of that as against my reading of it, and I said if your view were shared by others on the committee that could be clarified to make sure that that judgment was not the kind of judgment referred to in the last paragraph of section (c).

Senator ERVIN. Let's read it. I believe you agreed yesterday that this bill takes jurisdiction of matters under the bill from every court in the United States and vests it in a district court of the District of Columbia sitting as a three-judge court.

Attorney General KATZENBACH. Not quite every matter under the bill, but that is substantially true, Senator.

Senator ERVIN. Well, it does as far as the right of a State to cleanse itself of this dirtiness.

Attorney General KATZENBACH. Yes. You are absolutely right about that, yes.

Senator ERVIN. Now, I will read from line 17 to 23, page 3, which is a part of subsection (c) of section 3:

No declaratory judgment shall issue under this subsection with respect to any petitioner for a period of ten years after the entry of a final judgment of any court of the United States, whether entered prior to or after the enactment of this Act, determining that denials or abridgments of the right to vote by reason of race or color have occurred anywhere in the territory of such petitioner.

We agreed yesterday that the district court of the District of Columbia is a court of the United States.

Attorney General KATZENBACH. Yes.

Senator ERVIN. And it says, "Whether entered prior to or after the enactment of this Act."

Attorney General KATZENBACH. Senator, if the language there was inserted after the word "Act" on line 21, saying "Excepting any order issued pursuant to the previous paragraph," would that make my meaning clear?

Senator ERVIN. I didn't quite understand you.

Attorney General KATZENBACH. If you put in on line 21 after the word "Act" the words "excepting any order or judgment issued pursuant to the previous paragraph," would that make it clear?

Senator ERVIN. Where would you put the "except"?

Attorney General KATZENBACH. Right after the word "Act."

The CHAIRMAN (presiding). What page is that?

Attorney General KATZENBACH. This is page 3, Mr. Chairman, line 21.

Senator ERVIN. I am inclined to think that would make confusion more compounded.

Attorney General KATZENBACH. Perhaps there is a better way of doing it, Senator, but I am sure if we are in agreement as to what it is intended to say that with all of your skill we can find a way of saying that which satisfies you.

Senator ERVIN. Well, the trouble is you start out there with "No declaratory judgment shall issue under this subsection with respect

to any petitioner." Now, the only thing that can be issued here under this in nature of declaratory judgment is the judgment that a petitioner, a State or a political subdivision of a State, which happens to be the petitioner, has or has not violated the 15th amendment during the preceding 10 years, that is 10 years preceding the action. So that is what you are talking about.

Attorney General KATZENBACH. Yes.

Senator ERVIN. They go back 10 years, and for the next 10 years there is no place for repentance.

Attorney General KATZENBACH. Well, the intention here was, Senator, that there had to be 10 years, if I can describe, as clean years—

Senator ERVIN. Mr. Attorney General—

Attorney General KATZENBACH (continuing). Ten years without evidence of—

Senator ERVIN. Why not change this?

Attorney General KATZENBACH. I am sure we can find language to work that out, sir.

Senator ERVIN. Why not change the proceedings section and say that this act will not apply to any State or any political subdivision of the State that can come into the court and prove that during the year 1964 it did not violate the 15th amendment?

Attorney General KATZENBACH. That does not quite meet our problem, Senator, and the reason for it—I attempted to explain yesterday—is that if from here on in every State were to administer literacy tests in a completely fair manner, the result would be a large number of illiterate whites on the voting rolls and a smaller—and no illiterate Negroes on the voting rolls. The reason you have to go back to this is to have them apply what, in fact, was the standard that they had been applying in prior years for the future at this point. So it does not accomplish it to say "All right, we are sorry. We have been discriminating. But we will stop discriminating now," because you have all of the fruits of past discrimination which would then be preserved.

Senator ERVIN. In other words, the Government feels like it ought to take a little vengeance—

Attorney General KATZENBACH. Not at all.

Senator ERVIN (continuing). For past conduct—

Attorney General KATZENBACH. Senator, all we want—

Senator ERVIN (continuing). Even though the person or State or county was acting in a righteous manner with respect to the 1964 election.

Attorney General KATZENBACH. No, Senator. All we want is for these States to apply the same test that, in fact, they have been applying to whites which is, in fact, no test at all.

Senator ERVIN. But you say, Mr. Attorney General, that even though for over 9 years they have been doing that, they still must be put in the class of second-class States and second-class counties—

Attorney General KATZENBACH. Well—

Senator ERVIN (continuing). Even though they have repented of all their past sins and inequities 9 years before and have been acting in a righteous manner.

Attorney General KATZENBACH. Yes.

Senator ERVIN. They still must bear penalty for past sins.

Attorney General KATZENBACH. You have to reach back to accomplish this purpose, Senator. You have to reach back. You can't stop in 1964. Now, Senator Dirksen indicated the period of time that is proper to reach back for is one that was discussed. I think your proposal that it be just in 1964 would be quite unacceptable. I think other proposals that were made that went back more years than 10 we felt was unnecessary to accomplish the purpose. There has to be a period because people have been registered over a period of time and if the inequities of past practice are to be cured, not punished, cured, then some provision of this type seems to me absolutely essential.

Senator ERVIN. Well, if I understand your language correctly, it may not mean that to you, but it certainly means to me that you are punishing States under this bill. You are punishing States and subdivisions of States for past offenses, even though they are not now violating the 15th amendment. I would seriously question the capacity of Congress to enforce the 15th amendment by looking to the past and putting handicaps and limitations on the powers of States based upon events which occurred in the past and which have ceased.

Attorney General KATZENBACH. I believe, Senator, that, first, it is not punishment; second, that the effort is to set straight, to cure a situation that has existed, that the only cure that you can make in this situation that is effective is the one that is suggested here. Now, I think it is completely within—I do not see why—I do not see why if States have been violating the 15th amendment in the past, I do not see why Congress in attempting to enforce the 15th amendment should say to them, "You may preserve all of the fruits of your prior violation off into the future."

I think what Congress out to be saying to them is: "In order to effectuate the 15th amendment we are going to have to make it impossible for you to preserve off into the future all of the fruits of your past conduct."

And that is what the effort of this is.

Senator ERVIN. Well, do you think it is desirable to preserve the inequities of the past?

Attorney General KATZENBACH. No. It is not the inequities of the past that are being preserved. It is the inequities of the past that are being cured.

Senator ERVIN. Mr. Attorney General, you take the position, in all seriousness, that it is not a punishment or penalty upon a State or political subdivision of a State or the election officials of the State or political subdivision of the State to say they are unworthy to be entrusted with the same powers of government that belong to everybody else in the United States?

Attorney General KATZENBACH. I certainly take the position that that is not a punishment.

Senator ERVIN. You take that position when you pick out certain States in a bill. They are picked out by Congress and not by the courts—

Attorney General KATZENBACH. That is correct. Well—

Senator ERVIN. They are denied the right to exercise a clear constitutional power.

Attorney General KATZENBACH. I do not see why we should put the rights of—

Senator ERVIN. You say that is not a penalty on that State?

Attorney General KATZENBACH. I do say that is not a penalty. I do not see why, Senator, the clear constitutional power that you are talking about under article I, section 2, is a power that is so much clearer and so much greater than the clear constitutional power of the Federal Government under section 2 of the 15th amendment. That is contrary to all constitutional law that I know because where the Congress is given an express power to implement a provision of the Constitution it may adopt any reasonable and appropriate means for doing it.

Senator ERVIN. In other words, under the 15th amendment to the Constitution Congress has the power to annul the exercise by a State of the provision of the second section of article I and the 17th amendment.

Attorney General KATZENBACH. Yes, if that is a necessary—if that is a proper, reasonable appropriate thought-out means for Congress in order to implement the 15th amendment, just as under the commerce clause, Senator, there is a clear power on the part of the Federal Government to regulate commerce. It can override State laws in so doing.

Senator ERVIN. That is because that that power is given to the—

Attorney General KATZENBACH. This is given to them.

Senator ERVIN. That is given to the Congress and to no other body. But section 2 of article I of the Constitution gives the States the right to prescribe qualifications for voters in Federal elections. The 17th amendment does exactly the same thing. But you come and say that Congress can legislate under the 15th amendment and abolish the power of the States to prescribe qualifications under section 2 of article I and the 17th amendment.

Attorney General KATZENBACH. Yes, Senator, and I can cite court cases in support of that view, because where the courts have found the discriminatory use of tests in the same manner that Congress is now finding it they have frozen the use of old or new tests which clearly can be prescribed under article I, section 2, apart from the fact that these have been used in violation of the 15th amendment.

Senator ERVIN. Yes.

Attorney General KATZENBACH. They have done that, and they said they are going to do that until the effects of past discrimination have been cured, and that we have the—

Senator ERVIN. This is going, Mr. Attorney General, with all due respect, many bullshots beyond that. Those cases were tried in court, were they not?

Attorney General KATZENBACH. But it makes my point.

Senator ERVIN. It makes a great deal of difference because the court has the power to determine whether the Constitution has been violated and inflict requisite punishment. But the Congress does not have the power to make an adjudication that the Constitution has been violated and to inflict punishment.

Attorney General KATZENBACH. Senator, the constitutional point on this, as I understood it, if you were making the constitutional point that you could not under article II of the 15th amendment override article I, section 4, and suspend or eliminate literacy tests, I am saying I have judicial support, the Supreme Court and courts of appeal to the effect that you can, if it is necessary, to enforce—

Senator ERVIN. Mr. Attorney General—

Attorney General KATZENBACH (continuing). The 15th amendment so does. So, at least, we ought to agree that it is possible under the second clause to eliminate or to freeze or to do away with the rights of States to prescribe qualifications. At least that is possible to accomplish because we have court holdings which so state.

Senator ERVIN. That would be right interesting.

I would like to call attention to the case of *Dunn v. United States* which is reported in 238 U.S. at 347. The headnote correctly epitomizes the opinion on this point. It says:

The establishment of literacy tests for exercising the suffrage is an exercise by the State of a lawful power vested in it not subject to the supervision of the Federal Courts.

The Federal court has the power to determine in a properly instituted suit whether a State or political subdivision of the State or a particular election official, has violated the terms of the 15th amendment. It can then inflict any punishment on them that the act of Congress may authorize. But this is going a bullshot beyond that. This is letting Congress condemn the State.

Attorney General KATZENBACH. You use throughout words like "guilt" and "punishment" and "penalty," and so forth. I think, Senator, that all it is doing is taking reasonable and appropriate steps to enforce the 15th amendment. I do not think it is a punishment upon a State. I cannot conceive it to be a punishment upon a State to say "We are going to ask you to put on the same qualifications you have, in fact, been using for white voters for Negro voters until your past violations of the 15th amendment are cured."

It is exactly what the courts have been saying, and there is nothing in the Constitution, while it leaves the setting of qualifications to the State in article I, section 2, simply by, as you point out, saying that they shall be the same as for the numerous, most numerous branch of the State legislature. There is nothing in the Constitution that says under no circumstances may Congress be prohibited from dealing with qualifications. And I would suppose that it was awfully clear that if this, in the judgment of Congress it was necessary to do this, in order to enforce the 15th amendment, that it had the power to do so. I mean the court itself has struck down qualifications, as you know, Senator, it struck down the Grandfather Clauses, which were qualifications, enacted pursuant to article I, section 2 and struck those down, because they were on their face discriminatory.

Senator ERVIN. Yes.

Attorney General KATZENBACH. I see no reason why it cannot strike down qualifications where there is reason to believe in Congress judgment and a court opinion as well, under section (c) that we are simply going to strike down these qualifications for the future because in the judgment of Congress this is a reasonable and appropriate necessary way of enforcing the 15th amendment. To me that is simple and proper. I regret it is necessary to do it. But I do not think it is in any sense not only not unconstitutional, in fact, I go further and say that the 15th amendment itself, by putting in the 2d article there was an intention that Congress should legislate with respect to this subject.

Senator ERVIN. In other words, if a State or a political subdivision violates a provision of the Constitution, then Congress can deny that State the power to exercise the powers which other provisions of the Constitution vests in the State or political subdivision?

Attorney General KATZENBACH. Senator, I see no reason to state the principal that broadly. I will say where Congress has the power to enforce and is given it specifically in a section of the Constitution, it may take any means to do so that are reasonable, appropriate, and calculated to accomplish that end.

Senator ERVIN. How, can you show me a single decision in which the court has ever struck down a literacy test which on its face applies alike to all people?

Attorney General KATZENBACH. Yes.

Senator ERVIN. What case?

Attorney General KATZENBACH. United States against Tusso, and United States against Duke—excuse me—United States against Louisiana, the Supreme Court and—

Senator ERVIN. I ask you if in each one of those there was not a trial before a court and if the evidence did not show that the literacy test was being abused and misapplied so as to deny people the right to vote on account of race and color?

Attorney General KATZENBACH. Yes, but it was on—your question was on its face nondiscriminatory, and on its face that was nondiscriminatory.

Senator ERVIN. But the judgments in those courts did not wipe out the literacy test, did they? They merely enjoined this use in such a way as to accomplish that result.

Attorney General KATZENBACH. No. Wiped it right out.

Senator ERVIN. Entirely?

Attorney General KATZENBACH. Yes.

Senator ERVIN. What case did that?

Attorney General KATZENBACH. United States against Louisiana.

Senator ERVIN. Oh, that was one. They held that those laws were designed on their face to prevent Negroes from voting. Didn't they find that?

Attorney General KATZENBACH. No. They were drafted in a non-discriminatory way.

Senator ERVIN. Did they not finally reach the conclusion that they were drafted for that specific purpose?

Attorney General KATZENBACH. That they were drafted for that purpose?

Senator ERVIN. Yes.

Attorney General KATZENBACH. Yes. I think it would be fair to say that.

Senator ERVIN. I challenge you and every lawyer in the Department of Justice to find a single case where the court in the absence of a showing of the misapplication of literacy tests for the purpose of excluding people from voting on account of race and color struck down a literacy test which was fair upon its face in the absence of any evidence.

Attorney General KATZENBACH. In the absence of finding that it is—

Senator ERVIN. Yes; in absence of a court finding.

Attorney General KATZENBACH. Senator, of course, they have not, and, of course, we are not doing it here.

Senator ERVIN. But——

Attorney General KATZENBACH. You do not strike down the literacy test just for the heck of it. You strike them down because they are in violation of the 15th amendment.

Senator ERVIN. You are striking down the literacy test application in the 84 North Carolina counties in the absence of any evidence. You are striking them down by congressional recital.

Attorney General KATZENBACH. Striking them down by congressional recital and offering each and every one of those counties the opportunity to show that they have not discriminated.

Senator ERVIN. In the 10 years, last past.

Attorney General KATZENBACH. Within the past 10 years; yes.

Senator ERVIN. Now, I do not believe everybody in your Department agrees with you on this thing, do they?

Attorney General KATZENBACH. I have not—there are 9,000 lawyers. Not all of them have studied it.

Senator ERVIN. Yes.

Attorney General KATZENBACH. Senator, sir, I cannot answer that. I can say that I have consulted on this with the top officials in the Department of Justice and they agree. I include on that the Solicitor General who has to argue this case.

Senator ERVIN. I am informed that Mr. John Doar when he testified on February 25 of this year before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, testified that it was his view that if Congress desires to do anything in the field of voter qualifications it would have to be by constitutional amendment. Can you either affirm or deny he gave that testimony?

Attorney General KATZENBACH. I agree with that statement, if Congress wishes to strike down, which was the question, of voting qualifications throughout the United States, which was the context in which he made that, I agree completely, it has to be done by constitutional amendment. I have no question about it. Mr. Doar had been asked, if he had been asked—and he has read this law and studied this law and agrees with it, and agrees as to its constitutionality—had he been asked is it possible to strike down voter qualifications when they are in violation of the 15th amendment, I have no question as to what Mr. Doar would say.

Senator ERVIN. In other words, if you are going to pass a law that applies to the 50 States you would have to have a constitutional amendment, but you can make a law that strikes down the use of certain voter qualifications in six southern States and 34 North Carolina counties without a constitutional amendment?

Attorney General KATZENBACH. That is not an entirely accurate way of putting it, Senator.

Senator ERVIN. That is the substance of it.

Attorney General KATZENBACH. No. I think you can strike down the voter qualifications in each and every one of the 50 States, where you have a reasonable basis for believing they have been used in violation of the 15th amendment, and that is an appropriate way to do it. I would exempt no States from that. This statute exempts no States from that.

Senator JAVITS. Mr. Chairman, would the Senator yield on this Doar testimony?

Senator ERVIN. Yes; I will yield.

Senator JAVITS. I was here when Mr. Doar testified, and I believe he did testify, as a matter of fact, and I ask the Attorney General: Have you read Mr. Doar's testimony by any chance?

Attorney General KATZENBACH. I listened to it.

Senator JAVITS. Listened to it.

Attorney General KATZENBACH. Senator, I believe it was in response to questions that you asked.

Senator JAVITS. That is right. Is it not a fact that he testified to exactly the same view on the triggering effect of a finding, and he did not qualify that finding to have to be that of a court, of violation of section 1 of the 15th amendment, substantially as you—

Attorney General KATZENBACH. Yes.

Senator JAVITS (continuing). The policy he would perceive?

Attorney General KATZENBACH. Yes.

Senator JAVITS. All right.

Attorney General KATZENBACH. Senator, I think that it might be helpful for the record to show that in the recent Supreme Court decision of United States against Louisiana as to the test there is no evidence in the record that that particular test that the United States was questioning had ever been abused or used in violation of the 15th amendment. What the Court suspended was that test in the same manner that Congress is, in effect, suspending test here, and it did so on the basis of evidence that previous tests had been used in a discriminatory manner and had been abused. So that, in essence, what the Court did in United States against Louisiana is exactly what Congress is doing in this statute.

Senator ERVIN. They at least had evidence that previous similar tests had been used to deprive people of the right to vote on account of their race, did they not?

Attorney General KATZENBACH. That is right, provided here in section 8 what is—

Senator ERVIN. Here there is no evidence at all. There are no witnesses to be cross-examined. There is no chance to dispute the congressional adjudication of guilt.

Attorney General KATZENBACH. Well, I believe the situation is a little bit different because the Court is not given a power under article II, section 2 of the 15th amendment, to deal with this problem; Congress is. Therefore, if a court is going to deal with this problem it has to do so on the basis of the specific case before it, in the absence of Congress having used its legislative power under the 13th amendment. The point is that the constitutional point is that the Court held in that case that it could suspend a test, in which there had been no evidence of abuse, based on the prior record of abuse of similar tests in that particular State.

Senator ERVIN. Let's see.

Attorney General KATZENBACH. That is what we are doing here, Senator.

Senator ERVIN. This Wall Street Journal says, speaking of your testimony—

Attorney General KATZENBACH. I wonder whether they read it. I read that editorial. I did not think I said what they said I said.

Senator ERVIN. Let's see. I will read it right now:

So to justify a Federal law to override State voting requirements to permit the Federal Government to eliminate literacy requirements entirely in some States, Mr. Katzenbach had to adopt the line of reasoning that the abuse of a principal condemns the whole principal.

Is that not exactly what you are saying here, that while a State normally has the right under the Constitution of the United States to adopt a literacy test, the abuse of that power destroys that principal?

Attorney General KATZENBACH. I think that would be quite an accurate statement if you just added in there the fact that in order to enforce the 15th amendment and the legislative mandate under that, if Congress should determine that in order to prevent future abuses and to cure past abuses it is necessary to suspend the operation of these tests or suspend that principal for a limited period of time within these States it would be an accurate statement. I think perhaps the shorthand statement of that does not fully make the point that I attempted to make.

Senator ERVIN. Now, is not this next paragraph of this editorial exactly what you just then said?

That is, he argues that the Federal Government under color of the 15th amendment has the authority to override the constitutional right of some States because literacy tests—

And they have a quotation here. I do not know whether that is appropriate or not. But they have a quotation.

Has been perverted to test not literacy, not ability, not understanding—but race.

Attorney General KATZENBACH. That is correct.

Senator ERVIN (reading):

And this is sufficient reason for the Federal Government to eliminate them entirely wherever such perversion has taken place.

(The Attorney General nodded affirmatively.)

Senator ERVIN. They quote you pretty accurately, do they not?

Attorney General KATZENBACH. That is accurate, that part of it is.

Senator ERVIN. Then they say:

This argument, please note, is quite different from an argument for a Federal law requiring that all literacy tests be fair and equitable and that Federal authorities be authorized wherever necessary to see that it is so.

Attorney General KATZENBACH. Yes; it is different because it has to take account as Wall Street Journal does not, of curing the prior inequities.

Senator ERVIN. Yes; it proceeds further:

The fact that literacy tests can be fair and equitable in fact is conceded—

Attorney General KATZENBACH. Yes.

Senator ERVIN (continues reading):

the literacy tests of New York State will be left untouched as will those in a number of other States but the distinction is not made on an examination of the individual merits judicially measured of such tests. The merits and demerits would be measured under this law by how many people vote.

Now, is that not a correct statement?

Attorney General KATZENBACH. With the qualification of section (c).

Senator ERVIN. And that is the section where they come in and show the 10 years last past that they have not offended?

Attorney General KATZENBACH. Yes.
 Senator ERVIN. [Reading:]

On Mr. Katzenbach's line of reasoning the Congress could have abolished poll taxes—surely a thing susceptible to abuse—by simple statute instead of as was properly done by constitutional amendment.

Attorney General KATZENBACH. I always took the view that poll taxes in Federal elections could have been done by statute and there would have been no problem to it. I think I have testified in the other body, and I think I have testified—maybe I have not testified here—that I believe that to get rid of poll taxes by—I think you could suspend poll taxes under the 15th amendment under section 2 if you could establish that within the areas covered there was a high probability that those poll taxes had been used for discriminatory purposes and you gave the opportunity to the States and political subdivisions to come in and show that they had not.

My difficulty on this, on the elimination of poll taxes is that I do not believe I have the facts to make a record that poll taxes have been abused in violation of the 15th amendment.

Now, they were enacted in at least two of these States, and the legislative record will show it, because the State legislatures thought that they were a good device for discriminating against Negroes, but they have never been pushed to the point of having to use poll taxes for that purpose because they had such other much more easily and much more convenient devices; therefore, it makes it difficult for me to show the poll tax was abused.

If you do not let a Negro register he has no incentive to pay the poll tax. The fact he cannot register to vote is where the discrimination occurs. It makes it difficult for me to establish that the poll tax was also discriminatory. Having found a better device they used it.

Senator ERVIN. Do you recall that the Supreme Court of the United States held in the case of *Breedlove v. Suttles* that Georgia had the right under the Constitution of the United States to provide for poll taxes prerequisite to the right to vote?

Attorney General KATZENBACH. Of course, I recall that case, Senator, but I do not think that the Court said "And they may use this if they choose in violation of the 15th amendment." I agree with you, that the fact the Court specifically said in its language "save as restrained by the 15th and 19th amendments and other provisions of the Federal Constitution."

Senator ERVIN. Yes, sir, and that would be—

Attorney General KATZENBACH. So if you could show that the poll tax was in violation of the 15th amendment that decision would not give much comfort, would it?

Senator ERVIN. No. It held it did not violate the 15th amendment.

Attorney General KATZENBACH. Held it did not violate the 14th amendment.

Senator ERVIN. Held that it was applied impartially to all men. That is what that case holds.

Attorney General KATZENBACH. There was no evidence in that case that had not been—this is one of my problems. I said I cannot—

Senator ERVIN. You say if it is used to violate the 15th amendment, notwithstanding the fact that Georgia had the constitutional

power to impose a poll tax as a prerequisite of voting, Congress can by simple act pass a law to abolish Georgia's poll tax.

Attorney General KATZENBACH. Yes.

Senator ERVIN. Yes.

Senator JAVITS. Will the Senator yield on the poll tax matter?

Senator ERVIN. Yes.

Senator JAVITS. Is it a fact, Mr. Katzenbach, that if the Congress should find that in those two States you named, that at one and the same time that it was dealing with literacy tests, it wished also to deal with the poll tax because of the likelihood that it would be employed if other subterfuges were swept out of the way, would you say that would be beyond the power of Congress?

Attorney General KATZENBACH. I think the record is much more difficult on that, Senator, because it is hard to show that it has been employed for that. Our difficulty with respect to attempting to deal with poll taxes, except in the limited way we deal with them here, has been this one on the question in Breedlove against Suttles, which is going to be reexamined by the Court the next term, as to whether or not there is a 14th amendment violation in imposing the poll tax. At least four jurists are willing to reconsider that case because it is going to be argued before the Court. So, four jurists think that at least there is enough merit in the argument to have them look again at Breedlove against Suttles which was a 1937 decision.

I do not think anything that Congress says under the power of the 14th amendment helps very much. That is a congressional judgment that it violates the 14th amendment is no better, in fact not quite as good, as a judgment by the Supreme Court that it violates the 14th amendment.

As far as the 15th amendment is concerned, I say I am just thin on evidence on that which I am not on literacy tests.

What we feared on this was that if we were to attempt to suspend the poll tax within those areas, and the Court did not knock it out on 13th amendment grounds, in which case our problem would be solved, and then said there was not a sufficient record before Congress to make this judgment, then we would have failed to deal with the poll tax and would have to come back for further legislation along the lines proposed here, and you might keep people from voting in further elections by taking that constitutional risk, which I would regard as substantial. I do not mean to say that I think Congress—I want to make it clear—I think Congress can abolish poll taxes under the 15th amendment, if there is evidence before Congress that the poll taxes in any given areas have been used to violate the 15th amendment; Congress could make that finding and if that was a reasonable way of, as I think it is here, with respect to literacy tests, Congress could do it. I think it is a tougher congressional argument to make because I have not got enough facts.

Senator JAVITS. As a fact, is not Congress making the finding in the statute you propose that the poll taxes over and above the current year's poll tax—

Attorney General KATZENBACH. Yes.

Senator JAVITS (continuing). Represent an obstruction to voting, and so on?

Attorney General KATZENBACH. Yes, and the reason for that, as I am sure you are aware, Senator, is that there was no incentive to pay

a poll tax, if you were being discriminated against and not permitted to register under literacy tests. So here the judgment that Congress would make upon the enactment of this bill would be that you do not have to pay poll taxes for years when you are being discriminated against on registration. But you do have to pay it. I regret the fact that we had to adopt the procedure which even allows the Federal examiner to collect, but if you keep your eye on the proposition that the purpose of this is to get people permitted to vote when they have been discriminated against under the 15th amendment that seemed to us the best calculated way of accomplishing it even though I personally, and I think this view was shared by a number of the people who worked on this bill, would like to get rid of poll taxes. I personally would like to get rid of them wherever they exist. I do not see why a person should have to pay for the privilege of voting in a democracy.

Senator JAVITS. I thoroughly agree with you, and I shall probably seek to amend the bill to eliminate them. Thank you.

Attorney General KATZENBACH. You run a risk, Senator. You run a risk when you do that that you should be aware of. If you are wrong you would deprive people of voting.

Senator JAVITS. Well, in the limited way in which we have just discussed it. That is all.

Senator ERVIN. The editorial proceeds. It says this:

Indeed on this line of reasoning the fact that police powers are sometimes abused by local policemen—and they certainly are—would become an argument not for halting the abuse but for eliminating the local police powers.

Now, are not police powers very frequently abused?

Attorney General KATZENBACH. They are sometimes, sometimes abused.

Senator ERVIN. Does not the position you take lead to this, that although the Constitution—

Attorney General KATZENBACH. I do not think the police abuse, Senator, except in the very limited cases related to discrimination on voting. I do not see how under article II of the 15th amendment we would have anything like the facts were Congress to make a judgment that therefore all local police forces should be eliminated or even some of them.

Senator ERVIN. Do you take the position that this greater power of Congress to prevent States from exercising their constitutional powers only exists in respect to the 15th amendment and not in respect to other provisions of the Constitution?

Attorney General KATZENBACH. I believe, Senator, that where Congress is given an explicit power to legislate with respect to a problem that the power of Congress is greater with respect to that problem than it is if there is no such power given to Congress.

Senator ERVIN. I appreciate your answer, but I do not believe it is quite relevant to the question. I would like to ask the reporter to read the question to you again and see if I get a specific answer.

Attorney General KATZENBACH. I will make every effort to give you one.

The REPORTER (reading):

Do you take the position that this greater power of Congress to prevent States from exercising their constitutional powers only exist in respect to the 15th amendment and not in respect to other provisions of the Constitution?

Attorney General KATZENBACH. I believe that power exists in any area where Congress is given the explicit power to legislate. For example, it exists under the commerce clause where Congress has taken over State functions with respect to labor relations; with respect to food and drugs; with respect to meat inspection; with respect to child labor; all things that States could appropriately legislate about in the absence of a Federal statute pursuant to a power given to the Federal Government by the U.S. Constitution.

Senator ERVIN. Do you now see any distinction between the interstate commerce clause which vests in Congress the entire power to regulate interstate commerce and the provisions of the 15th amendment in its relations to section 2 of article I and the 17th amendment clearly giving the States—giving the Federal Government no power whatever to prescribe qualifications for voting?

Attorney General KATZENBACH. Very little difference, Senator. The commerce clause is obviously—you made it clear—very broad power to go into a number of areas in the interests of regulating commerce. The power under article II of the 15th amendment is more narrowly focused upon steps that are reasonably and necessarily appropriate aimed as the objective of enforcing article I of that section. So that, I would think that the principal was the same but that, in fact, the power under the interstate commerce clause can cover labor relations here and food and drug over here and vice over here, and a number of different problems; whereas, the legislation that would be appropriate under the 15th amendment would have to be clearly aimed at eliminating violations of the first clause.

Senator ERVIN. Has not the court held in the cases that the power given Congress by the interstate commerce clause is an exclusive power which belongs to Congress alone and, for that reason, Congress can nullify any State laws that are inconsistent?

Attorney General KATZENBACH. Yes.

Senator ERVIN. Yes. But the Constitution says that voter qualifications are quite different. It says that the State can prescribe them. The only function the Federal Government has under the Constitution is to see that there is no discrimination practices in violation of the 15th amendment or the 19th amendment.

Attorney General KATZENBACH. Right.

Senator ERVIN. Yes.

Attorney General KATZENBACH. We are in complete agreement on that statement.

Senator ERVIN. With all due respect to you—I think the difference between the interstate principals that have been invoked by the interstate commerce clause and those invoked by these constitutional provisions with reference to voting, as I said yesterday, only with reference to another matter, is as wide as that gulf which yawned between Lazarus and Abraham's bosom and Diomedes and Hades.

Does not article I of the Constitution prescribe certain powers of Congress, and then it says expressly that Congress has the right to legislate, to pass any law which they deem necessary or appropriate for executing those powers?

Attorney General KATZENBACH. Yes.

Senator ERVIN. Well, there is really no difference between the legislative power given Congress under the 1st amendment and the legisla-

tive power given Congress by the 15th amendment to enforce the amendment, is there, when you get to the substance of things?

Attorney General KATZENBACH. That is correct, Senator. The power given under article I to enforce the Federal powers under article I has to be related to those Federal powers and similarly the power given under the 15th amendment has to be related to the substance of what Congress was attempting, what the country under the Constitution was attempting, to state in the 15th amendment. It has to be a relationship between the two, yes.

Senator ERVIN. In both instances, the Constitution says Congress has the power to enact such legislation as it deems appropriate, does it not?

Attorney General KATZENBACH. Yes.

Senator ERVIN. So there is no greater power given to Congress under the 15th amendment to nullify State laws than given under any other provision of the Constitution?

Attorney General KATZENBACH. If it is reasonable and necessary and appropriate to enforce the Federal laws given there it could nullify an inconsistent State law; that is correct. I think that would necessarily be true under the supremacy clause.

Senator ERVIN. If Congress can nullify the power of a State, because the State perverts or abuses that power in one respect, it can do it in all respects; can it not?

Attorney General KATZENBACH. If it does in one respect, it can do it in all respects that are similar to and subject to the same test thereon.

Senator ERVIN. Congress could pass a law declaring that the local police have abused the police powers given to the States and deprive the States of the power to exercise their police powers, could they not?

Attorney General KATZENBACH. That may be your position, Senator.

Senator ERVIN. It is not mine.

Attorney General KATZENBACH. It is not mine. Then we are in agreement. They cannot.

Senator ERVIN. That is one thing then that the States can still hold on to; in other words, that is beyond the reach of Congress. That is one power which the Congress cannot deprive States by recitation in a law?

Attorney General KATZENBACH. I would think that was true, Senator. I cannot think of any power similar to that which is being exercised under this bill, which is given to the Federal Government. There is not provision that I can recall in the Constitution that says law-enforcement responsibilities are given to the Federal Government. If such a provision exists then I suppose you could override contradictory State law-enforcement statutes. You could under the 13th amendment, I suppose, moderate or modify certain exercises of the police power if you had a factual showing that these were used to interfere with the right to vote. But it would be a very narrow power. I do not think that—I think if we could focus on the fact that we are here implementing section 2 of the 15th amendment and that we are not here doing other things under the Constitution it would help to make the constitutional position clear.

Senator ERVIN. The enforcement of the 2d section of the 15th amendment is in the identical words of the concluding section of the 14th amendment; is it not?

Attorney General KATZENBACH. Yes.

Senator ERVIN. Yes. And the 14th amendment says that no State shall deprive any person within that jurisdiction of the equal protection of the laws; does it not?

Attorney General KATZENBACH. That is correct.

Senator ERVIN. Does that provision not apply every time that a State law which is so broad as to include the ordinances of all municipalities located within that State touches any individual?

Attorney General KATZENBACH. Yes. Maybe, Senator, if we looked at a more specific field, I would think, for example, and I wonder whether you would agree that Congress could under the 14th amendment forbid by statute, use of a coerced confession? Would you agree that would be appropriate legislation and implementation of the 14th amendment?

Senator ERVIN. Yes, I think under the decisions I believe.

Attorney General KATZENBACH. Even if State statutes say you can beat anybody you want to, to get a confession, we can override and nullify that State statute by saying that is a violation of the 14th amendment. I would think we could.

Senator ERVIN. But under your reasoning, Congress could step in and annul every State law which, either by reason of its terms or by reason of its application, made a distinction between the individuals, assuming that classification was reasonable.

Attorney General KATZENBACH. I would think if there were State laws that permitted, for example, State officials, State police or local police to arrest without probable cause and to detain people for a period of 48 hours for questioning and providing that statements made during those 48 hours should be admissible in court, that Congress could write a law which said that you may not do any of these things and that that would be appropriate implementation of the congressional power under the 14th amendment, or the fact they have left it to the courts to do, and that is another interesting point because you see what the court did in United States against Louisiana, where Congress had not legislated on this, is, in effect, a very similar remedy to what we are proposing here. The constitutional point is the same.

Senator ERVIN. I do not understand you so to say, that the equal protection of laws clause only applies to State laws. It also applies to the application of those State laws.

Attorney General KATZENBACH. Yes, it does.

Senator ERVIN. And under your line of reasoning in respect of the 15th amendment, although the law of the State provided for admission to bail, if a police officer arrested a man and denied him the right to bail, then Congress could pass a law annulling the State laws on the subject, could they not?

Attorney General KATZENBACH. Yes, in effect, I think that they could because presently denial of that kind of a right is grounds for criminal charge under the Federal law, and I suppose to that extent any State laws which are contrary are already annulled.

Senator ERVIN. So under the 14th amendment, Congress could annul practically every law of every State if it saw fit.

Attorney General KATZENBACH. Not every law of every State, but every law of every State in violation of the 14th amendment.

Senator ERVIN. Congress could annul every law of every State which in its application by any State official whether by a policeman on the beat or justice of the peace or a school commissioner or any other State or local official, if this act was in violation of the law, could it not?

Attorney General KATZENBACH. If it showed there were a finding on the part of Congress and evidence before Congress that that particular law or those particular categories of law had been repeatedly used in any particular areas or under any particular tests used in violation of the 14th amendment, then I think Congress would be allowed to enact appropriate legislation to do so. But I would think it is a terrible mistake, Senator, to think that Congress can just do it without findings of some kind, without facts of some kind. We put those into the record.

Senator ERVIN. All it has to do is just pass the kind of finding you have here, make up any kind.

Attorney General KATZENBACH. If the court were to find—

Senator ERVIN. Yes.

Attorney General KATZENBACH. And the court is going to test that finding against the record and against the objective that Congress was attempting to achieve, and it is going to have to find that this was a reasonable and appropriate way to deal with the problem which Congress had legislative authority to deal with in order to uphold the constitutionality. Now, if the court does not find this bill is inactive, that this is a reasonable and appropriate way of dealing with discrimination in voting, then, of course, you would be right and I would be wrong.

I believe that it is, and our whole case rests upon the fact that this is a reasonable and appropriate way for Congress to deal with the difficulties that have occurred under the 15th amendment. If the court says it is not, then obviously it is going beyond the power of Congress.

Senator ERVIN. I noticed the way you answered about the 14th amendment, you said if a law had been repeatedly abused.

Attorney General KATZENBACH. Yes.

Senator ERVIN. But there is no such requirement laid down in this field, there is just one abuse in 10 years.

Attorney General KATZENBACH. We discussed that yesterday.

Senator ERVIN. Yes.

Attorney General KATZENBACH. Senator, I believe, and I said I thought that there could be some evidence that it was not an isolated abuse, could require that.

Senator ERVIN. I will read the rest of this editorial and then I will proceed to another phase.

Attorney General KATZENBACH. I have already read it, and I did not enjoy it much, Senator.

Senator ERVIN. I do not blame you. I do not blame you. But I think we have agreed that starting with these paragraphs I have read to you, starting with the second column, four of them, you have agreed that if I—

Attorney General KATZENBACH. My recollection is I disagreed with the last paragraph that you read, Senator, and I qualified one of the others, but the record will show what I have said about it.

Senator ERVIN. Yes. I think I will put this in the record in a minute and then we can see how much. I thought from your own testimony with respect to all of the paragraphs in the second column until we got down to the one about the police officers, that you admitted this was an entire reflection of your—

Attorney General KATZENBACH. I believe the record will show that I qualified one of the statements earlier which I thought was rather too broad, but I believe in the first amendment and the Wall Street Journal can print what it wants.

Senator ERVIN. In my statement I eliminated that because that is the paragraph that started on the bottom of the first column. Now I will read the rest:

For our own part we have no reason to doubt that in some places the constitutional principles under which each State sets its own voting requirements has been perverted to deny some people the voting rights they are entitled to.

And we agree that this is a strong argument for national action to remedy these abuses wherever occurring.

Now I come to a paragraph I have to admit that I agree with:

But if that is also an argument for altering the Constitution in unconstitutional fashion then what the Attorney General of the United States is saying is that one perversion justifies another.

Attorney General KATZENBACH. Let me be very clear, Senator, crystal clear, that I have no desire to alter the Constitution. I merely have the desire to enforce its provisions.

Senator ERVIN. And this bill undertakes to suspend, as the Senator from Illinois so well said yesterday, the provisions of the Constitution giving States the right to prescribe literacy tests. I do not think the fact that somebody violates one provision of the Constitution gives Congress the power to annul that provision of the Constitution. It would be a pitiful thing if it did because if the State judges did not convict people, the State juries did not convict people, then under the theory that I see that supports this bill Congress just passes the law doing away with jury trials and courts in the States.

Attorney General KATZENBACH. That is not the theory, Senator. I expressed the theory repeatedly to you. I have tried to be as clear about it as I can. I do not know how I can express it any more clearly than I have.

Senator ERVIN. Well, I think that the theory that Congress can suspend the power of the State to exercise its constitutional powers under article II, section 2 of article I, and the 17th amendment because of violation of the 15th amendment, leads to that conclusion inevitably.

Attorney General KATZENBACH. Senator, the short answer to that is (1) the Court under the identical amendment has already given identical relief to the relief suggested here, or virtually identical relief to the relief suggested here; (2) that if the Court can do that I see no reason why Congress under its legislative provisions under section 2 cannot do a similar thing, particularly in view of the fact that there is provision in here for a judicial determination with respect to any area that has not, in fact, been discriminating in the past.

You talked yesterday about *ex post facto*, and so forth, yet the finding in the *Louisiana* case was that because of your past conduct you cannot now invoke a new test.

Senator ERVIN. Well, that was the Court that was going on the evidence of the past conduct.

Attorney General KATZENBACH. That is the same Court that is going to look at this bill.

Senator ERVIN. And I think there is a very wide distinction between legislative power and judicial power, and I think I know that you agree with this.

Attorney General KATZENBACH. But the constitutional theory there which you have been arguing about—the suspension of the State's right under the 15th amendment—can you suspend the right of the State to impose certain qualifications on the basis of the fact that that State has in the past abused its rights under article I, section 4. Can you do that under the 15th amendment? The Court has already held, yes, you can.

Senator ERVIN. I think in that case the Court—

Attorney General KATZENBACH. The Federal power is supreme.

Senator ERVIN. The Court held in that case that the statute itself was unfair and was a device to circumvent the 15th amendment.

Attorney General KATZENBACH. The Court held that.

Senator ERVIN. The Court did not hold that in respect to the literacy test that applies to North Carolina's 100 counties until this bill becomes effective and then only applies to 50 to 66 of them.

Attorney General KATZENBACH. That is right and we will see if this bill is passed whether they will so hold.

Senator ERVIN. That is a very queer thing. We have one law that governs voting qualifications in one county in North Carolina and an entirely different law in the next county.

Attorney General KATZENBACH. Yes.

Senator ERVIN. Yes.

Attorney General KATZENBACH. You have that situation presently existing right at the moment in any number of areas in the United States, Senator. I mean it may seem anomalous but after all every place that we won a court case and we have an order which freezes and forbids the use of the new and old tests which we have a number of judgments on in those particular counties, Senator, a different requirement is being imposed than in adjacent counties.

Senator ERVIN. Yes, sir, and you did that in a judicial proceeding with evidence where an opportunity to be heard was given and where the evidence established it before you deprived them of that power.

Attorney General KATZENBACH. Let's be clear that this permits a similar judicial proceeding and similar evidence to be introduced.

Senator ERVIN. I have to disagree with you there because under those existing laws, the question is whether they are presently engaged in violation of the 15th amendment. Under this bill the question would be whether they violated it any time in the last 10 years.

Attorney General KATZENBACH. We can introduce with respect to those tests—we cannot say presently. You go back and you look at whether or not they have been discriminating in the past. You cannot prove future conduct. You cannot, in the nature of things, prove present conduct on the day you are on trial. You have to base that on what people have done in the past.

Senator ERVIN. Yes, but you do not ordinarily go back 10 years to prove something.

Attorney General KATZENBACH. We have gone back, I think, 10 years in some of our cases, have we not?

Mr. GLICKSTEIN. Yes.

Attorney General KATZENBACH. Yes, we have gone back 10 years, Senator.

Senator ERVIN. Now, this bill would outlaw the literacy test in 6 States, 34 counties of North Carolina.

Attorney General KATZENBACH. Seven States, I believe, Senator.

Senator ERVIN. Seven States?

Attorney General KATZENBACH. Yes.

Senator ERVIN. Well, I don't guess there may be a finding that somebody wrongfully applied the literacy test to an Eskimo up in Alaska, but you do not have information to that effect, have you?

Attorney General KATZENBACH. That is correct, Senator, but—

Senator ERVIN. That is one reason I think—

Attorney General KATZENBACH. I do not see why you would be adopting the position that it is wrong as applied to the 34 counties of North Carolina as well, and I do not see why you should assume that we knock out Alaska.

Senator ERVIN. I think you ought to knock out Alaska. I think the fact that you bring a bill that will condemn a State that nobody claims has ever discriminated against anybody in this field shows that this bill condemns the innocent along with some that may be supposed to have been guilty.

Now, the Federal Government seems to have an opinion that some States ought to have a literacy test. I would like to call attention to the fact that this Congress is not very consistent on this point. For example it adopted section 1443 of title 8 of the United States Code, which regulates the kinds of a test a person must pass to become a naturalized citizen. Of course a person has to be a citizen to become entitled to the protection of the 15th amendment. This section provides the examinations he must undergo.

Such examination shall be limited to inquiry concerning the applicant's residence, physical presence in the United States, good moral character, understanding of and attachment to the fundamental principles of the Constitution of the United States, and ability to read, write, and speak English. Other qualifications necessary to become a naturalized citizen shall be uniform throughout the United States.

Now, here we have the Constitution on one hand outlawing all tests in certain States and providing for tests for naturalization for foreigners.

Attorney General KATZENBACH. I am glad you raised that point, Senator, because it might be interesting to the other members of the committee, that it was on those requirements that the Louisiana test was based, and it was that test which was declared unconstitutional under the 15th amendment by the Supreme Court.

Senator ERVIN. Yes. What is sauce for the State goose is not sauce for the National gander.

Attorney General KATZENBACH. The Supreme Court felt on the basis of the Louisiana record that tests based on language should be suspended.

Senator ERVIN. Now, I would like to ask you a few questions about existing laws on this general subject.

Section 1983 of title 42 of the United States Code bears the headline "Civil Action for Deprivation of Rights" and provides:

Every person who, under cover of any statute or ordinance, regulation, custom or usage of any State or territory, subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law sued in equity or other proper proceedings for redress.

Now, my question is this: Have not the Federal courts interpreted this statute to give to a person who is wrongfully denied the right to register or to vote, the right to bring an action for damages if the injury has been consummated and the right to bring a suit in equity for preventive relief if he is threatened with such a deprivation?

Attorney General KATZENBACH. Yes, Senator.

Might I add that (1) it is quite a burden when you have thousands and thousands of people in this, most of whom have very little money to ask them to bring a civil action to secure their right to vote with the difficulty and the expenses that that involves.

You would have, if that were your method for effectuating—Congress really already decided when it passed the 1957 act and recited quite expressly that 1983 was inadequate to accomplish this purpose, and it made a similar decision in 1960, when it strengthened the provisions of the 1957 act, and made a similar decision in 1964. I would hope and expect that today Congress will make a similar decision by enacting this bill.

Senator ERVIN. Regardless—

Attorney General KATZENBACH. It just is not the way to get to vote. I mean 600,000 lawsuits is not the way to get to vote.

Senator ERVIN. Regardless of that, this statute does create two causes of action, one for damages, for a past deprivation, and the other is suit in equity to prevent a future deprivation which the individual citizen himself can bring, does it not?

Attorney General KATZENBACH. Yes. That is defended with taxpayers' money, and you are talking here about people who are poor. I just do not think that, I do not think you, sir, would say that the way to get the right to vote, when you have been discriminated against and discriminated against by State officials, the way to get this is to go to the expenses which may run into tens of thousands of dollars in order to secure what the Constitution promises every citizen irrespective of race.

Senator ERVIN. The Constitution promises a lot of other people a lot of other things, does it not, and Congress has not made any provision to bring suits for their personal benefit.

Attorney General KATZENBACH. That is correct.

Senator ERVIN. Yes.

Attorney General KATZENBACH. And the reason that is that those other provisions have been lived up to by State officials which we agree they should. This one has not.

Senator ERVIN. Now, there are two statutes on the subject which are available to the private individual. The suit in equity which this section authorizes is a suit triable before a Federal district judge without the jury, is it not?

Attorney General KATZENBACH. On the equity part, yes.

Senator ERVIN. Yes. Now, I have come to some statutes that are available to the Attorney General. I call your attention to title 18, section 242, and which bears a headnote, "Deprivation of Rights under Cover of Law," which reads as follows:

Whoever, under cover of any law, statute, ordinance, regulation or custom, willfully subjects any inhabitant of any State, territory or district to the deprivation of any rights, privileges or immunities secured or protected by the Constitution or laws of the United States or to different punishment, pains or penalties on account of such inhabitant being an alien or on reason of color or race, than are prescribed for the punishment of citizens, shall be fined not more than \$1,000 or imprisoned not more than 1 year or both.

Now, I will ask you if it has not been adjudged in many decisions of the Supreme Court of the United States, and the lower Federal courts, that under that statute that any State or local election official who willfully denies any qualified citizen the right to register or to vote can, upon conviction, be sentenced to as much as a year in prison and \$1,000 fine?

Attorney General KATZENBACH. That is correct, Senator.

Senator ERVIN. Yes.

Attorney General KATZENBACH. After trial by jury on that.

Senator ERVIN. Trial by jury?

Attorney General KATZENBACH. Yes.

Senator ERVIN. Yes.

Now, I call your attention to another statute, which is title 18, section 241, and it is headed "Conspiracy Against Rights of Citizens," and which provides as follows:

If two or more persons conspire to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, or if two or more persons go in disguise on the highway or on the premises of another with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than \$5,000 and imprisoned not more than 10 years, or both.

Now, I will ask you if the Federal courts have not held that under this statute if any State or local election official who enters into an agreement with any other person to deny any qualified citizen the right to register or to vote is punishable on conviction by as much as \$5,000 fine and 10 years in prison?

Attorney General KATZENBACH. That is right, Senator. We have had some trouble securing convictions.

Senator ERVIN. Now, both of those statutes are available to the Department of Justice, are they not?

Attorney General KATZENBACH. And they have been used repeatedly, but not with the success that might be inferred from the power that you think is there.

Senator ERVIN. That myth I have been very much intrigued with because I have asked your predecessors, three of them—

Attorney General KATZENBACH. Yes.

Senator ERVIN (continuing). How many indictments, how many prosecutions, I will put it, since one of these is a misdemeanor and the other a felony—

Attorney General KATZENBACH. Yes.

Senator ERVIN (continuing). How many prosecutions has the Department of Justice instituted under either of these statutes against an

election official for denying a qualified citizen the right to vote on account of his race or color.

Attorney General KATZENBACH. I do not have the precise figure, Senator, but the difficulty with the criminal statute in some of these areas is the difficulty of securing a conviction by a jury on matters that are highly emotional. I believe in the jury system, I think it is right and I think it is proper, but it does undeniably make, in my judgment, criminal provisions of this type less effective than they might otherwise be.

Also, my feelings in that regard which I state today were also shared by the Congress because in 1957 these some provisions of law that you are reading now were used in the argument and debate with respect to the 1957 act, and Congress at that time made the judgment that these were not effective in solving the 15th amendment problem and, therefore, enacted new legislation.

In general, with election officials we have found it to be more effective to attempt to use the provisions of the 1957 and the 1960 act to prevent discrimination in the future, to get people voting, and we have to bring criminal cases against those same officials. Our objective always has been as it is in this law, not to punish people, not to punish States, not to punish subdivisions, not to punish individuals; our objective is to get people who are able to vote, qualified to vote, but who happen to be Negroes, subjected to the same standards which, in fact, have been used for the registration of white persons.

Senator ERVIN. I have put this question to three of your predecessors.

Attorney General KATZENBACH. Yes.

Senator ERVIN. And they have not furnished me with a single name of a single case that they have ever had instituted by the Department of Justice to secure the conviction of any election official upon the charge that he has either willfully of his own head and volition in the one case or by virtue of conspiracy with another in the other case denied any person qualified to vote of his right to vote on the basis of his race or color. And has there been any prosecution instituted that you know of within this generation?

Attorney General KATZENBACH. Well, *United States v. Classic*, the Supreme Court decision would, of course, be one.

Senator ERVIN. That is almost in a previous generation now. That goes back into the forties, does it not?

Attorney General KATZENBACH. 1931.

Senator ERVIN. Can you tell me of a single time in the last 15 years in which the Department of Justice has made a bona fide attempt to use either one of these statutes to bring to justice the offenders on the grounds that they have denied any man the right to vote on account of his race or color?

Attorney General KATZENBACH. I think my predecessors probably shared my judgment as to the difficulty of this and to the more effective means of accomplishing the result under the 1957 act. And you know, Senator, we have used sections 241 and 242 repeatedly against much more serious offenses. We use those sections and in the case of the killing of Colonel Penn, and that case is going to be argued in the Supreme Court next term, because it was thrown out on the basis that the statute was not broad enough to cover the shooting on the highway of Colonel Penn.

We also used it in the case of both of those sections in the case of the three civil rights workers murdered in Mississippi, and the felony acts therein. The 241 counts were thrown out by Judge Cox.

Between 1959 and 1964 we have brought 119 prosecutions under sections 241 and 242.

Senator ERVIN. Yes, but—

Attorney General KATZENBACH. And we have secured 13 convictions.

Senator ERVIN (continuing). But Mr. Attorney General, not a single one of those indictments so far as I have ever been able to learn was based upon a charge that any election official had denied any qualified voter of his right to register and vote on account of his race or color.

I make that statement because all of your predecessors have said that they did not use these statutes in that particular case.

Attorney General KATZENBACH. I think the reason they did not use them is that they would be totally ineffective.

Senator ERVIN. Yes. They have all said, in effect, that southerners are just despicable people, that they will not keep an oath to try a case according to evidence, and they will not bring a case to give them a chance to see whether that is so.

Attorney General KATZENBACH. Well, Senator, I just said we brought 119 indictments under those sections. Only secured 13 convictions. I assure you that our record of indictments and convictions in other areas of law is a heck of a lot better than that.

Senator ERVIN. Well, my question, though, is, and I will ask it to the gentleman that sits on your right, If there was a single one of those 116 cases a case which involved the question whether a State or local election official had denied a qualified citizen the right to vote on account of his race and color?

Attorney General KATZENBACH. I do not believe there was.

Senator, might I add this point? One of our difficulties throughout has been delay in this respect. We bring a criminal prosecution there, and then we have to get that decided before we can bring a civil suit under the 1957, 1960, and 1964 acts. So we add another year or year and a half to a process that already takes a long period of time.

Now, I do not think that the Department ought to be subject to criticism for (1) attempting to get people to vote as fast as possible and, (2) for following the view of Congress that these sections were ineffective and civil remedies ought to be attempted. And that is what we have been doing since 1957. We have been following the judgment that Congress made about this, a judgment which I happen to share.

Senator ERVIN. I would like to ask the following: If I construe your testimony right, there has not been a single prosecution in recent years under either of these statutes based upon the allegation that a local or State election official has denied anybody the right to vote on account of race or color.

Attorney General KATZENBACH. That is correct.

Senator ERVIN. Yes. Now, as to these 116 other cases, what happened to them? What happened to the 100?

Attorney General KATZENBACH. It was either an acquittal or hung jury in 100 of them.

Senator ERVIN. Did they get indictments in all of them?

Attorney General KATZENBACH. Yes.

Senator ERVIN. Or has informations?

Attorney General KATZENBACH. Either indictments or informations in all of them.

Senator ERVIN. Were these all jury verdicts?

Attorney General KATZENBACH. Yes. They are all jury trials, all jury verdicts. Some—I take back—the facts on the Penn case, for example, the judge said the statute did not cover it. There may have been other instances of that.

The Supreme Court in the *Classic* case rather narrowly defined the language of section 241 and said, in effect, that there had to be a specific Federal statute that was being violated in that instance, rather than a more general constitutionally protected right.

Senator ERVIN. Beg pardon? Are you not confusing the *Classic* case with the *Screws* case?

Attorney General KATZENBACH. Yes. *Screws* case.

Senator ERVIN. The *Screws* case was insolvent.

Attorney General KATZENBACH. Yes, the *Screws* case. You are right.

Senator ERVIN. The *Classic* case held that there was a denial of right to vote or the right to register to vote or right to have the vote counted. That was a question where they did not count the votes right, was it not?

Attorney General KATZENBACH. Yes. The *Screws* case is what I meant.

Senator ERVIN. Over what period of time were these 116 cases dropped?

Attorney General KATZENBACH. That was over a 4-year period.

Senator ERVIN. Have all of them been brought in the South?

Attorney General KATZENBACH. Not all of them in the South, no. Most of them in the South.

Senator ERVIN. Can you break them down? You may not have the information here. But I would like you to put in the record where they were brought.

Attorney General KATZENBACH. All right. We can provide that information for you, Senator. I do not remember where the convictions were secured at the moment.

(Subsequent to the hearing the following information was received:)

18 U.S.C. 241-242 prosecutions, 1950-64

Alabama.....	21	Nevada.....	1
Arkansas.....	1	New York.....	2
California.....	1	North Carolina.....	8
Colorado.....	8	Ohio.....	3
Florida.....	5	Oklahoma.....	1
Georgia.....	17	Pennsylvania.....	4
Idaho.....	1	Puerto Rico.....	2
Indiana.....	8	South Carolina.....	8
Kentucky.....	2	Tennessee.....	6
Louisiana.....	3	Texas.....	11
Maryland.....	1	West Virginia.....	1
Massachusetts.....	1		
Mississippi.....	18	Total.....	110
Missouri.....			

1 The statistics included in this table represent approximations based upon various statistical summaries maintained by the Department of Justice.

2 These prosecutions either were commenced by the filing of informations or submissions to grand juries. Some prosecutions involved multiple defendants, but this table reflects the number of prosecutions brought, not the number of defendants involved.

Disposition of 18 U.S.C. 241-242 prosecutions, 1959-64

No true bills	58
Acquittals	27
Convictions	18
Indictments dismissed	7
Grand juries dismissed	2
Pending	11
Other (suicide before trial)	1

This figure represents the actual number of persons convicted. In some instances, 1 prosecution resulted in multiple convictions.

Senator ERVIN. I have been told this by other Attorneys General. Do you claim that southern jurors will not try a case fairly and impartially?

Attorney General KATZENBACH. No, I do not make that kind of claim. I believe in the jury system.

I would say this, Senator, and it does not just apply in racial matters, it applies in other matters as well. There is a strong community feeling about a particular problem. Sometimes it is difficult to get all 12 jurors to agree.

I offer as an illustration of this the fact that it was not until 2 or 3 months ago after repeatedly trying that we first secured a criminal conviction in a tax case in the State of Arkansas. Apparently there was a feeling that criminal remedies by the Federal Government in Arkansas were inappropriate. At least I assumed that to be true because the cases that we brought in Arkansas, the jury cases, were no different than the jury cases brought in a number of other States.

I think it would be blind to say that where there are strong feelings with respect to an issue and certainly there are in places in this country, and I do not confine it to the South, but there are places where there is racial bias or where there is strong feelings on the racial problems. I think it is more difficult to secure a jury conviction there. I do not say this for the purpose of reflecting on the jury system, which I believe in, and I do not say it for the purpose of reflecting on the integrity of any particular juror. But I do not know any trial lawyer who would not say that were an issue as highly emotional, where feelings in the community are divided about this or highly opposed to a particular law and its enforcement, that it would not be more difficult to secure a conviction in that kind of a case. I think you would agree with me from your own experience.

Senator ERVIN. Well, Mr. Attorney General, I spent many years—I hate to admit how many now—as trial lawyer or trial judge in the courts of North Carolina, and I found that North Carolina juries were very fair in making their verdicts in racial cases. I do not believe the Department of Justice is justified in taking the position that they will not use these statutes for fear a jury might not perform its duty. I do not think that is an excuse for the Department of Justice not to perform its duty. I think that people who willfully deny other qualified citizens of any race the right to vote ought to be punished, and I think the Department of Justice ought to try a few old-fashioned criminal prosecutions under these statutes and find out whether they can get convictions without just assuming they are going to lose all of them. I think southern people are about as true to their oaths as people from other areas of the country.

Attorney General KATZENBACH. I completely agree with that, Senator. I think they are just as exactly as true to their oaths as other areas of the country. I do not say there is any difference from people in Maine or people in Michigan or people in California. But I say that if you bring a case in any one of those other States which involves highly emotional issues on which people have very strong opinions and views and if those views and opinions are contrary to the law that you are trying to enforce you have a heck of a row to hoe in Michigan as well as in Mississippi.

Senator ERVIN. Now, in the *Penn* case the court held that that case, in the first place, there was no officer involved, did it not?

Attorney General KATZENBACH. In which case?

Senator ERVIN. Assassination of Colonel Penn.

Attorney General KATZENBACH. Yes?

Senator ERVIN. There was no public official involved and, therefore, these statutes would not apply for that reason.

Attorney General KATZENBACH. They said there was no federally guaranteed rights—

Senator ERVIN. Yes.

Attorney General KATZENBACH (continuing). In that situation because it was not related to voting.

Senator ERVIN. So that was in accord with all previous decisions on the subject, was it not?

Attorney General KATZENBACH. I believe that the decision of Judge Bootle in that case was one that was measured and calculated in the light of prior precedents. I have no criticism of him in the slightest. I think it was a perfectly fair decision. We happen to think it was a wrong decision. For that reason we are appealing it. But I do not want to cast the slightest reflection on him. He applied prior precedent, believed it required him to do it. He had reasons for believing it required him to do this. We think either he was wrong or the precedent was wrong.

Senator ERVIN. Surely.

Senator JAVITS. Mr. Chairman, would the acting chairman yield just for a question to him, perhaps?

Senator ERVIN. Yes.

Senator JAVITS. Would the acting chairman who has now been questioning the witness for a day and a half, and that is quite all right, be able to give any of the rest of us information as to his plans?

Senator ERVIN. I hope to finish in about a half hour more.

Senator JAVITS. Thank you, sir.

Senator ERVIN. I expect it might be advantageous for us to take a recess now until 2:15. I am almost finished.

I assure the gentleman from New York that if we are limited we cannot search for the truth.

Attorney General KATZENBACH. Senator, I would like to make my position perfectly clear. I am available to you and other members of the committee throughout, for any time that you think it is important, that every provision of this be searched and discussed, and the Congress make a judgment about it.

Senator ERVIN. You have been most generous. The only regret I have is that you do not share the same sound opinions I do on this subject.

Senator HART. Mr. Chairman, would there be any objection to the record including at the point the Attorney General was discussing certain decisions earlier this morning that he be permitted to submit citations?

Senator ERVIN. No objections. Be glad to have it.

We will adjourn until 2:15.

(Whereupon, the above-entitled hearing was recessed at 12:15 p.m., to reconvene at 2:15 p.m. the same day.)

AFTERNOON SESSION

(Whereupon, the above entitled hearing was resumed, pursuant to recess, at 2:15 p.m.)

STATEMENT OF HON. NICHOLAS deB. KATZENBACH, ATTORNEY GENERAL OF THE UNITED STATES—Resumed

The CHAIRMAN. Mr. Attorney General, let us have order, please. I would like to ask you a question or two to see if I understand the poll tax provision of the registration provision.

As a person who is registered by a Federal registrar must pay his poll tax at that time and he has until 45 days before an election to do that; is that correct?

Attorney General KATZENBACH. That is right, unless he paid it previously, sir.

The CHAIRMAN. Yes. Now how long is that registration good for?

Attorney General KATZENBACH. The registration would depend upon the State law; would be subject to the same length of time provision as the State law would provide in this situation. If he is put on the State rolls pursuant to this he would continue to be on the State rolls for whatever length of time they provided.

The CHAIRMAN. Now, that would be a valid registration as long as the State law provides; is that correct?

Attorney General KATZENBACH. That is right. There is a three—

The CHAIRMAN. Would the State registrar have the power to remove him from the rolls?

Attorney General KATZENBACH. Well, the State registrar would have the power to remove him from the rolls if he departed, ceased to be a resident of the area, was convicted of a crime, or some such similar provision.

The CHAIRMAN. Suppose he did not pay his poll tax?

Attorney General KATZENBACH. If he did not pay his poll tax after this if the State law provides that the payment of the poll tax is required to stay on the registration rolls then the payment of the poll tax would be a condition to staying on the rolls.

The CHAIRMAN. That is what I wondered. Thank you, sir.

Now, in my State you take two poll tax receipts when you vote in the primary. You are repealing that provision for people who are registered by Federal registrars; is that true?

Attorney General KATZENBACH. I missed the first part of the question, Senator. Would you repeat it?

The CHAIRMAN. I say in my State, the State of Mississippi requires a voter in the primary, Democratic primary, to show two poll tax

receipts as a condition of his voting. Now, for people who have registered by Federal registrar you are repealing that, that provision of the State law?

Attorney General KATZENBACH. As to one of the poll taxes?

The CHAIRMAN. Yes, sir.

Attorney General KATZENBACH. Yes, Senator.

The CHAIRMAN. Now, you have two things. You have your rolls, the voters who have registered is one condition; the other condition is to show a poll tax receipt. Now suppose a man is on the roll and had not paid his poll tax. Can he vote?

Attorney General KATZENBACH. No, Mr. Chairman, he could not vote if he had not paid any poll tax. He could vote if he had paid the last poll tax for the current year in which he was voting.

The CHAIRMAN. In other words, if he paid a poll tax in 1964 he could not vote in a 1966 election—

Attorney General KATZENBACH. That is right.

The CHAIRMAN (continuing). Unless he paid a subsequent poll tax that was levied against him?

Attorney General KATZENBACH. That is right, sir.

Could I qualify the answer I made earlier? A person put on the rolls by the Federal examiner cannot be taken off those rolls except in accordance with section 5(d) on page 6. A person is put on the rolls by the State registrar. He would be removed from the rolls in accordance with State law, and if he were put in the rolls by the State registrar pursuant to a certification by the Federal examiner, the provisions of section 5(d) would a minimal provision, I would suppose, that he was entitled to stay on in accordance with State laws if he were on the State registration list and to be removed in accordance with those laws as well.

The CHAIRMAN. Could be removed?

Attorney General KATZENBACH. Yes.

The CHAIRMAN. But now where the law provides two things, one, that he be on the roll and, second, that he present the poll tax receipts—

Attorney General KATZENBACH. Yes.

The CHAIRMAN (continuing). As a requirement to vote. Now, he would still have to meet those two conditions; is that correct?

Attorney General KATZENBACH. Yes, Mr. Chairman, with the qualification that if he had paid his poll tax to the Federal examiner for that year when he was registered, the Federal examiner could—the receipt that he got for the payment of that tax would have to be honored at the polls at the voting places when he voted in the election for that year.

The CHAIRMAN. Yes. But he pays the poll tax, say, in 1965, in 1966, does not pay a poll tax in 1967, but goes to vote in our general election. Could he vote?

Attorney General KATZENBACH. No, no, he could not, Mr. Chairman.

The CHAIRMAN. That would be determined by the State authorities. They could refuse to permit him to vote.

Attorney General KATZENBACH. Yes, they could not permit him. They could not refuse him to pay his poll tax. But if he did not pay it, they could decline to permit him to vote.

The CHAIRMAN. All right. Senator Ervin?

Senator ERVIN. I asked you this morning about four statutes, two giving the right of individual action to the offended party and two criminal statutes available to the Attorney General.

Now, under the 1957 Civil Rights Act the Attorney General also has the authority to bring a civil action in equity in any case where any person is qualified or threatened with the denial of his right to vote, is that not true?

Attorney General KATZENBACH. That is right, Senator.

Senator ERVIN. And these cases are tried before the judge without a jury, are they not?

Attorney General KATZENBACH. Yes, sir.

Senator ERVIN. And going back just for a moment to criminal actions, do you not know that the names of all grand and petty jurors in Federal court are in a jury box prepared by the clerk of the Federal court and a jury commissioner appointed by the judge?

Attorney General KATZENBACH. Yes, sir.

Senator ERVIN. And they can exercise wide discretion in respect to the people whose names they put in the jury box?

Attorney General KATZENBACH. Not too wide, Senator.

Senator ERVIN. Those who are on the panel.

Attorney General KATZENBACH. Yes.

Senator ERVIN. Is it not true that judges in the Federal district courts have the right to express opinions on the facts offered in criminal cases?

Attorney General KATZENBACH. Yes. They rarely do, but they have that power.

Senator ERVIN. Is it not true that as a matter of practical fact that a jury gives a judge credit for a lot of wisdom and they ordinarily follow his expressions of opinions on the facts?

Attorney General KATZENBACH. Sometimes that is true, Senator. Perhaps often that is true.

Senator ERVIN. And it is generally considered to be true that a great many States that believe in jury trials have a law like my State that forbids the judge to express an opinion on the facts in order that the jury be in that court the finder of fact.

Attorney General KATZENBACH. For the same reason, very few Federal Judges do express that opinion.

Senator ERVIN. As a general rule, the Federal court sits at certain particular places within the State. They do not sit in every county, do they?

Attorney General KATZENBACH. No; that is correct, Senator.

Senator ERVIN. As a general rule, most criminal cases in Federal courts are tried some distance from the place where the case originates, is that not true?

Attorney General KATZENBACH. I could not answer that quantitatively, Senator. It would often be true, yes.

Senator ERVIN. Now, in 1960 Congress passed another Civil Rights Act. It provided that the Attorney General could not only bring a suit at the expense of the taxpayers to prevent any qualified citizen from being denied the right to vote on the basis of race or color. It also provided that when they found that one man had been denied the right to vote on the basis of race or color, then the Attorney General could ask the court to make the determination as to whether that was pursuant to a pattern, did they not?

Attorney General KATZENBACH. Yes, Senator, although I think it would be well advised to put in more evidence to show the pattern. It would be difficult for a judge to make.

Senator ERVIN. After the Attorney General makes a motion in the cause subsequent to the time one person of a particular race has been found to have been denied the vote on account of race or color, then they could have a second hearing on the question, whether pursuant to a pattern directed to people of that same race, is it not?

Attorney General KATZENBACH. Yes.

Senator ERVIN. Then it provides that in any case that the court finds that there was a denial pursuant to that pattern, then the court can either assume the duty of passing on qualifications to the voters themselves or that race or he can appoint voting referees to do so, does it not?

Attorney General KATZENBACH. Yes, Senator.

Senator ERVIN. So you already have a statute under which upon a showing of those essential facts that the Federal court can appoint as many voting referees as are necessary in any political subdivision anywhere in the United States, can you not?

Attorney General KATZENBACH. Yes, Senator.

Senator ERVIN. Yes, sir. And yet you say you do not have sufficient laws?

Attorney General KATZENBACH. Yes, Senator.

Senator ERVIN. Yes, sir. I think one of the chief industries of the Department of Justice in recent years has been asking for new laws in the voting rights field.

Attorney General KATZENBACH. Well, regrettably, Senator, we had to do that. If the existing laws had worked I can assure you I would not be here today.

Senator ERVIN. Do you know how many counties there are, say, for example, in the State of Alabama?

Attorney General KATZENBACH. About 70 some, I think that is right. There are 82 in Mississippi—the chairman can correct me if I am wrong—I think 82 in Mississippi. I think roughly the same number in Alabama.

Senator ERVIN. Well, you can bring one suit, could you not, in those States as you alleged in this 3(a) that there is discrimination against Negroes, systematic discrimination against Negroes on the basis of race, and try one case on that subject, and then, under that, get a degree for appointment of voting referees.

Attorney General KATZENBACH. Throughout the State?

Senator ERVIN. Clean out the case.

Attorney General KATZENBACH. No, sir.

Senator ERVIN. You could not? You certainly could bring—

Attorney General KATZENBACH. It is something we would—I do not suppose that is entirely clear. We proceeded on the basis of suing in each voting district. We have sued in three States, Louisiana, Mississippi, and Alabama, but that was to remove additional tests that had been prescribed by State law there. It is not clear to me that we can sue the whole State and get registrars appointed in every district.

The CHAIRMAN. Would you yield?

Senator ERVIN. Yes, sir, Mr. Chairman.

The CHAIRMAN. What about counties in those States that do not discriminate? Why should they be put under this law?

Attorney General KATZENBACH. Well, Senator, our view of that under this bill was that if the State as a whole failed to meet the—

The CHAIRMAN. I know what the bill says, but what is the reason for applying it to counties where there is no discrimination?

Attorney General KATZENBACH. Well, Senator, I think under the bill it would work out in this way; where the discrimination was widespread and existed in several counties, then the whole State would be put under the bill. Where discrimination was isolated one would expect it to meet the objective criteria of the bill and only those counties would be put under. I suppose the theory behind it is that if discrimination is widespread in a number of counties within the State so as to effect the figures with respect to the whole State, that it indicates on the part of the whole State an unwillingness to deal with their situation and to permit or tolerate its existence in a large number of counties throughout the State.

The CHAIRMAN. Well, each county is controlled through registers in their counties. The State has nothing to do with it. We have counties where Negroes vote, freely register, and freely vote.

Now what is the reason that they would be put under the provisions of this bill?

Attorney General KATZENBACH. The reason on it—

The CHAIRMAN. Did you say that the whole State would be put on it, but the act would not be enforced in these particular counties?

Attorney General KATZENBACH. I would think, no, the act would be enforced. I would think in areas where there was no discrimination presently existing, Mr. Chairman, that there would certainly be no need to appoint Federal examiners within those counties.

The CHAIRMAN. Why should Congress give you authority to put counties under the provisions of this bill, the bill that you say, that you admit, is very drastic, when there is no discrimination?

Attorney General KATZENBACH. Well, Senator, I think the reason for it is that in attempting to legislate within this area it is necessary to make decisions which will make effective the provisions of the 15th amendment.

The CHAIRMAN. Yes. But they are effective. Now, I cannot conceive that is the reason here because it is effective in a great many of our counties and we do have a large Negro vote in numbers of counties. I think I know of statements—

Attorney General KATZENBACH. Vote in Mississippi as a whole.

The CHAIRMAN. I have statements that you made about the conditions in certain counties in our State. Now, I think there is something else behind this bill because you certainly, logically, would not put a county under these drastic provisions when there is no discrimination because of race in that county.

Attorney General KATZENBACH. Well, Senator, I believe that if a State has a very low registration of Negroes within it and a quite high registration of white within it as a whole—

The CHAIRMAN. Yes, but—

Attorney General KATZENBACH (continuing). That indicates a pattern of discrimination that permeates, if not all of the counties, a very great number.

The CHAIRMAN. Let's be frank. Let's be absolutely frank. You know, yourself, that that is not true in all of our counties, do you not?

Attorney General KATZENBACH. No, Mr. Chairman, I believe that the situation is better in some counties than it is in others, but I believe that there is discrimination in violation of the 15th amendment in the great majority of counties of the State of Mississippi.

The CHAIRMAN. All right. In the great majority. But you get back to the counties in which there is no discrimination.

Attorney General KATZENBACH. I think for Congress to provide an effective enforcement of the 15th amendment it may be necessary in order to make this bill effective.

The CHAIRMAN. The effective provision against innocent people. That is what you are saying.

Attorney General KATZENBACH. I am saying in order to effectuate this act that it is, in my judgment, necessary to deal with States that fall within these criteria on a statewide basis. In the case of Mississippi, I think this is not unjust, as far as the State is concerned as a whole because—

The CHAIRMAN. The State has nothing to do with these registers to vote.

Attorney General KATZENBACH. Mr. Chairman, the State has passed laws. The State legislature has passed laws which, in my judgment, have been aimed at the voting problem and aimed at it in ways—

The CHAIRMAN. You have had thousands of Negroes who registered, have you not?

Attorney General KATZENBACH. What?

The CHAIRMAN. You have had thousands of Negroes who voted under those qualifications?

Attorney General KATZENBACH. About 6 percent, slightly over 6 percent of the Negro population in Mississippi was registered, Mr. Chairman.

The CHAIRMAN. Who told you that?

Attorney General KATZENBACH. It is the best figure that we have, and we only have the figures for certain counties because Mississippi does not keep their statistics on a racial basis, so that we can only get that on the counties where we have conducted investigations, and within those counties and based on those figures we estimated it to be about 6.2 percent.

The CHAIRMAN. But everybody knows that Hines County, where the State capitol is, there is no discrimination; in Washington County there is no discrimination.

Attorney General KATZENBACH. We have a seat in Hines County, Mr. Chairman, in which we believe there has been discrimination. The 92 percent of the white citizens eligible by age and residents, taking that only kind of figure, I take, are registered in Hines and 15 percent of the Negroes by the same criteria are registered in Hines.

The CHAIRMAN. Yes. But everybody knows that there is no discrimination in that county.

Attorney General KATZENBACH. Well, Mr. Chairman,

The CHAIRMAN. That is like 44 percent of the people voting in Texas.

Attorney General KATZENBACH. We brought a suit in Hines County which takes the contrary position.

The CHAIRMAN. It is strictly political.

Attorney General KATZENBACH. Mr. Chairman, I most respectfully beg to differ with you on that.

The CHAIRMAN. I know, but I still say it is strictly political.

Go ahead, sir.

Attorney General KATZENBACH. The registration in Hines has increased from 1962-64 by about 2 percent, from 13.2 to 15.4 for the Negroes. It has increased for the whites from 83 to 92. Their registration process in that county in 1963, 1,608 whites applied, of whom 1,600 were accepted, and 8 rejected; 457 Negroes applied of whom 214 were accepted and 243 rejected. And in 1964, 1,837 whites applied, 1,834 were accepted, 3 rejected. Of the Negroes who applied there were 379 who applied, 298 were accepted, 81 were rejected, and there are 470—

The CHAIRMAN. How many Negro votes do you say there are in Hines County?

Attorney General KATZENBACH. Right now?

The CHAIRMAN. Yes.

Attorney General KATZENBACH. There is 15 percent of—

The CHAIRMAN. How many Negro votes in the county? Now? Give me the figure.

Attorney General KATZENBACH. I cannot take 15 percent of 36—there are 36,00 Negroes eligible by age and residence and there are 5,616 of those registered on a figure, that does not take account of deaths since 1962.

The CHAIRMAN. There is no discrimination in that county, no discrimination in Coates County, there is no discrimination in Washington County, there is no discrimination in numbers of counties, and I do not see why the county where they are registered without trouble should be put under the drastic provisions of this bill.

I am also bound to say that somebody has been dreaming about those figures because you have thousands of Negro voters in Hines County. I challenge the accuracy.

Attorney General KATZENBACH. The figures on the number of registered here are figures that are necessarily provided by the State, Mr. Chairman.

The CHAIRMAN. By the State?

Attorney General KATZENBACH. They come off the State records.

The CHAIRMAN. You just said the State keeps no records.

Attorney General KATZENBACH. Excuse me.

The CHAIRMAN. You just said that, and that is the truth; they do not keep records by race.

Attorney General KATZENBACH. But we take county records as to people registered and then we have to in the State of Mississippi to go out and identify the race of those people.

The CHAIRMAN. I say the facts are wrong.

Go ahead.

Senator ERVIN. Mr. Chairman, I have been puzzled why they will not bring in those important North Carolina counties when they say they have only information of 33 violating the 15th amendment. I cannot understand in all of this bill.

But going back to this Civil Rights Act of 1960, you could go into North Carolina and bring a suit. First, you could conduct an investi-

gation in North Carolina in the 34 counties and ascertain very speedily whether there is any basis to charge those 34 counties with violation of the 15th amendment, could you not?

Attorney General KATZENBACH. No, sir.

Senator ERVIN. Why can you not?

Attorney General KATZENBACH. Because it just cannot be done very speedily. It involves an examination of all the voting records, and we would estimate that that would take about 6,000 man-hours to do that.

Senator ERVIN. Mr. Attorney General, you do not have to do that. If you are going into a county you find 40 or 50 Negroes who are capable, who have applied for registration, and who qualified. They have been denied the right to register and vote. That is all you would need to make that a case. All you have to do is show the pattern or practice. If you can show that by testimony of that character, that members of the colored race were habitually denied the right to vote in any substantial numbers you made out enough on the pattern.

Attorney General KATZENBACH. I wish it were that easy, Senator. Unfortunately, it is not. To bring out a pattern of practice, you have to show the Negroes were denied and then you have to show what standards were applied to white persons at the same time.

Senator ERVIN. The Department of Justice takes the position it has to investigate the individual voter in that county or every person, every adult in that county, who is not registered and everyone who is registered. If this is your position then it is understandable why you could never get a case tried.

Attorney General KATZENBACH. I did not mean to intimate we took that position, Senator. The position that we take on it to show a pattern and practice of discrimination, you have to show that one of two things, either that Negroes who were clearly qualified were denied the rights or you have to show that Negroes who were as well qualified as whites were denied their rights. And so you have to examine. In the first place, you have to identify the race of the particular applicants within the county, and then you have to try to figure out what standard and practice was being used by that registrar, if any, and then you have to show what kinds of, to show a pattern of practice, the courts require us to show that Negroes who possess the same or superior qualifications to the white applicants were rejected. So we have to look at both.

Senator ERVIN. Well, Mr. Attorney General, I think that you are making your job appear a whole lot more onerous than it is. In North Carolina—

Attorney General KATZENBACH. We have lost cases.

Senator ERVIN (continuing). The 1960 voting law refers to an election district. In North Carolina we have many in each county. We have 25 or 30 or 40 or 50 election districts, some of them with just 100 or 200 or 300 adults residing in them, and it would not take an attorney to go into one of those North Carolina counties, and 34 attorneys of the 600 in the Department of Justice or 34 out of the Division of Civil Rights part of the Department of Justice could go into one precinct in each of those 34 counties and if he has enough intelligence to practice law, who can accumulate enough evidence in

a week in each precinct to determine whether there is any basis as to that election district for a suit. And there is no occasion to go into the county that has 30,000 population and investigate all the adults when you could go into selected precincts and bring suits there.

Attorney General KATZENBACH. It takes you that much longer, Senator, if you go into each precinct. We find it rather onerous to go even into counties.

Senator ERVIN. Mr. Attorney General, I have been pretty active in politics in my life. I used to go into my precinct that had about 900 people in it, and I knew exactly how every one of them voted, and whether they were registered or not, and it did not take me but about a week with the assistance of the few people at meetings to ascertain that fact. I wonder why you cannot get anything done. If the average lawyer took as much time to find out about a precinct as you intimate the attorney for the Department of Justice does, he would starve to death.

Attorney General KATZENBACH. Perhaps you had a warmer reception in those precincts of North Carolina than we have had in some of our voting investigations.

Senator ERVIN. I would say that a great many of them had an awful lot of Republicans and they never did give me a very warm reception.

Attorney General KATZENBACH. We even had the records refused. We even have to sue to get the records, Senator. We have to go through lawsuits on that, even to get the basic material from which to work.

Senator ERVIN. I think I can assure you that you will not have any trouble getting records in North Carolina.

Attorney General KATZENBACH. If those records show no discrimination, I can assure you there is not going to be any of the 34 counties covered in this bill.

Senator ERVIN. They will have to get a lawyer under this bill and they will have to come all the way to Washington City. They will have to pass every courthouse between their homes and Washington City and find the doors of the courthouse nailed shut against them, under this bill. Even if they are absolutely innocent they will have to come up here and prove their innocence.

Senator DIRKSEN. Will the Senator yield?

Senator ERVIN. Yes.

Senator DIRKSEN. I think your offer is indeed generous. I thought maybe the Department could use you as *amicus curiae* to help the cause.

Senator ERVIN. I will assure the Senator from Illinois that it takes all of my time to try to point out how inequitable some of the bills are offered here today. I would not have time to go down there, personally.

But I say this, if I could not go into a precinct I do not know how the Mississippi election is, but if I could not go into a precinct in about a week with an FBI agent and find out the situation there, I would turn in my law license.

Now, instead of asking the States to be deprived of their constitutional powers, why does the administration not come in and ask for bigger appropriations, for more investigators and more attorneys?

Attorney General KATZENBACH. Senator, we are not asking the States to be deprived of their constitutional powers. We have asked for more attorneys in the past. We have got more attorneys. We still have found that the average time of a case in one county runs to a regrettably long period of time, averages about 28 months, and after we have won the case, after 28 months, we often have gotten inadequate relief.

Senator ERVIN. You know that is always true when you go to get a new law interpreted; do you not?

Attorney General KATZENBACH. No.

Senator, I think if your position is that the attorneys in the Department of Justice are not competent to do this job and if the FBI investigators are not competent to get these records and to go over them, then that is a reflection on the Department of Justice which I simply think is totally unjustified. I know of no group of attorneys that have worked longer hours and harder to accomplish this. I think they are skilled attorneys. I do not think they ought to turn in their licenses to practice. I think that the country owes them a debt for the job they have attempted to do.

Senator ERVIN. Mr. Attorney General, I think you have enough competent lawyers to accomplish a lot of results. I do not think you have to go to establish a pattern. I do not think you have to go and examine all the adults, even in a single precinct, because all you have to show is that it is done pursuant to a pattern you can bring in and show only a number of cases. Then you have sufficient evidence for the judge to infer that there is a pattern, and there is a rule of law, as I always understood it, that a judge can take and exclude after so long cumulative evidence on either side and reach a conclusion; is that not a rule of law?

Attorney General KATZENBACH. Yes, Senator. Unfortunately, we have—well, look at the Selma case which I described in my prepared testimony. Look at the length of time it took and is taking.

Senator ERVIN. That is the reason I wondered why you did not go down there and indict the registrar of Selma. That is what I think I might have brought the thing to a head.

Attorney General KATZENBACH. I appreciate the fact that you had that view, Senator. I think it would have added another year to the process and, in my judgment, would probably have simply put us a year behind where we are now had we done it.

Senator ERVIN. All you had to do is secure his conviction, under title 18, section 242, would be to show that he had denied the right to register to one qualified citizen of the Negro race to make out a case under that statute.

Attorney General KATZENBACH. And persuade 12 jurors.

Senator ERVIN. Yes; and persuade 12 jurors. But when you charge people with treason, you have to persuade 12 jurors they are guilty of treason; do you not?

Attorney General KATZENBACH. Yes, Senator.

Senator ERVIN. Yes. You certainly would not want the registrar of Selma convicted unless you could prove that the charge was true to the satisfaction of 12 jurors; would you?

Attorney General KATZENBACH. I believe in the jury system, Senator.

Senator ERVIN. How many suits have been brought under the Civil Rights Act of 1957 and Civil Rights Act of 1960?

Attorney General KATZENBACH. Seventy-one.

Senator ERVIN. And what States have they brought them in, Louisiana, Mississippi—

Attorney General KATZENBACH. Louisiana, Mississippi.

Senator ERVIN. Alabama?

Attorney General KATZENBACH. Alabama.

Senator ERVIN. And two—

Attorney General KATZENBACH. Georgia.

Senator ERVIN. Two in Georgia?

Attorney General KATZENBACH. Two in Georgia, yes. Tennessee. That is it.

Senator ERVIN. All of those cases were tried by a Judge without a jury, were they not?

Attorney General KATZENBACH. Yes.

Senator ERVIN. They are all equity proceedings? How many of them have been tried?

Attorney General KATZENBACH. They are in different stages. We have all the statistics on those cases. I cannot give you a complete picture on that, Senator. They are all in one stage or another of trial. We have yet to lose a case. We have lost them initially.

But we filed suits in July of 1961 in Mississippi. Those are the first suits filed there. In March of 1965 we have yet to have satisfactory results in either of those two cases.

Senator ERVIN. But those two cases—

Attorney General KATZENBACH. We filed more than two in Mississippi. The first two that were filed were filed in July of 1961, and it is better than 3½ years later and we still have not gotten adequate relief in those cases.

The CHAIRMAN. What about the other cases now? You speak of two cases. What about the other cases you filed in the State of Mississippi?

Attorney General KATZENBACH. In Mississippi, we have gotten relief, that is pretty good, in the northern part, in two cases. Two in the north and one in the south where we have gotten, where we regard as adequate relief.

Senator ERVIN. If the district judge fails to try the case, you could get the chief judge of the circuit court to assign somebody to take his place, can you not?

Attorney General KATZENBACH. That is what he chose to do, Senator.

Senator ERVIN. And the chief judge of that circuit, I believe, is Chief Judge Albert Tuttle, is it not?

Attorney General KATZENBACH. Yes.

Senator ERVIN. He is certainly not manifested in any lack of sympathy toward the Government's position in these cases, is he?

Attorney General KATZENBACH. I think he is an able, honorable judge.

Senator ERVIN. I am not saying anything to the contrary. He has been very diligent in enforcing the law in these cases, has he not?

Attorney General KATZENBACH. And in all cases, Senator.

Senator ERVIN. Yes.

So you won every lawsuit you tried that has come to judgment, except—

Attorney General KATZENBACH. We have had to appeal some. Or we have yet to lose an appeal.

Senator ERVIN. Well, you either won them in the trial court or won them in the court of appeals, have you not?

Attorney General KATZENBACH. Or they are sitting around waiting to be tried, or waiting to be argued or something.

Senator ERVIN. So you have had very good luck, very good fortune, politically speaking.

Attorney General KATZENBACH. Senator, I go back to my prepared statement and show you the progress that we have made under those laws—

Senator ERVIN. Yes.

Attorney General KATZENBACH (continuing). By looking at the registration figures in some of these States. I went through the—

Senator ERVIN. I remember about—

Attorney General KATZENBACH (continuing). The case histories on these—

Senator ERVIN (continuing). About seven.

Attorney General KATZENBACH (continuing). And show what we have been able to accomplish in 8 years, since the 1957 act was passed.

In Alabama, the number of Negroes registered to vote is increased by 5.2 percent to a total of 19.4. Mississippi, almost a decade, it has increased from 4.3 to 6.4. Louisiana, 1956, it has increased by one-tenth of 1 percent.

Senator ERVIN. I was struck by your observations about Selma in your statement. I wondered why in the world the Department of Justice did not go in there and institute one old-fashioned criminal prosecution. But that has not been done.

Attorney General KATZENBACH. No; it has not been done, Senator. We have not done that because we thought the civil remedies would be faster and more effective and more in line with the judgment that Congress made in 1957, 1960, and 1964, that the criminal remedies were inadequate.

Had Congress felt a few old-fashioned criminal suits, as you describe them, would have been effective to solve this problem, I doubt that Congress would have passed the law in 1957, 1960, and 1964, that it did pass.

Senator ERVIN. By comparative reasoning, if the Congress did not think the criminal statutes were of any value, I do not think they would have left them on the books.

Attorney General KATZENBACH. They have been of value. Those statutes are broad, as you pointed out, Senator. We convicted, for example, 1 of the cases there of the 16 that we won was a case in Gary, Ind., where we successfully prosecuted a Negro policeman for violating the rights of a Negro citizen.

Senator ERVIN. Had not most of these prosecutions under section 241 of title 18 been for what we call, for want of a better term, police brutality cases?

Attorney General KATZENBACH. Yes, sir; they have been almost entirely, Senator.

Senator ERVIN. And they have been North, South, East and West, have they not?

Attorney General KATZENBACH. Yes; they have, Senator.

Senator DIRKSEN. Could I ask a question?

Senator ERVIN. Yes.

Senator DIRKSEN. On the basis of your experience in Louisiana over the last 8 years, how long would it take in terms of years to adequately cure the registration problem that exists there?

Attorney General KATZENBACH. Something between 6 and 10 years, I would think, Senator.

Senator DIRKSEN. How long would it take in Alabama?

Attorney General KATZENBACH. About the same.

Senator DIRKSEN. Generally.

(The Attorney General nodded affirmatively.)

Senator ERVIN. I would like to ask—

Attorney General KATZENBACH. Of course, I have difficulty answering that because I do not know how many new statutes the legislators will pass, which we then have to take up through the judicial process. They only meet, I think, every 2 years which is—

Senator ERVIN. How many times have you had a court to find there has been a pattern of discrimination?

Attorney General KATZENBACH. How many times?

Senator ERVIN. Yes.

Attorney General KATZENBACH. Nineteen times.

Senator ERVIN. And in those cases, the courts could appoint any number of voting referees, could they not?

Attorney General KATZENBACH. Yes; Senator.

Senator ERVIN. How many have been appointed?

Attorney General KATZENBACH. Two cases.

Senator ERVIN. I mean, what is the number of voting, how many counties and how many voting referees have been appointed in each county?

Attorney General KATZENBACH. One in each of two counties, is that correct?

Senator ERVIN. Under the law you could appoint a dozen, could you not?

Attorney General KATZENBACH. Sir?

Senator ERVIN. Under the existing law, you could appoint a dozen instead of one?

Attorney General KATZENBACH. The judge could, yes, sir.

Senator ERVIN. The judge could.

The CHAIRMAN. What two cases were those?

Attorney General KATZENBACH. Both in Alabama. One in Dallas. In Perry County there is one presently functioning, and there is one to be appointed in Dallas County.

The CHAIRMAN. That is where Selma is.

Attorney General KATZENBACH. Yes, that is right, Senator.

In a number of other cases, the judge has acted as the Federal registrar himself.

Senator ERVIN. Now, I want to invite your attention to one or two other sections of the bill.

Under section 8 of the bill a State cannot change its laws. It provides that a State cannot change its election laws in respect to matters of qualification or procedures and make them effective until the laws are approved by a Federal court sitting in the District of Columbia, does it not?

Attorney General KATZENBACH. Yes, that is essentially what it says, Senator.

Senator ERVIN. Do you not consider that a very drastic provision?

Attorney General KATZENBACH. It is a difficult provision, Senator. I do not know that I would have selected the term "drastic" but it is quite a strong one.

Senator ERVIN. This is what it is. There is a State which under the Constitution has the right to prescribe election laws, has that power under section 4 of article I of the Constitution, notwithstanding the fact it is given that power by the Constitution of the United States itself, here is a provision that the State legislature cannot make a change in its election laws effective until that change is approved by some judges sitting up here in the District Court of the District of Columbia. That is the effect of this, is it not?

Attorney General KATZENBACH. Yes, it is, Senator.

Senator ERVIN. Yes, sir. Do you know of any precedent in the history of this country whereby State legislation is made prevented from going into effect until it is approved by Federal court?

Attorney General KATZENBACH. Yes, Senator.

Senator ERVIN. What case?

Attorney General KATZENBACH. All the reapportionment cases, Senator.

Senator ERVIN. All—

The CHAIRMAN. Repeat that. I could not understand.

Attorney General KATZENBACH. Reapportionment cases, Mr. Chairman, where the courts found the existing reapportionment to be unconstitutional and it said that if the legislature adopts a new plan before that plan is effective, it must be submitted to the court for its approval.

Senator ERVIN. That is a court. That is not a legislature. Do you know any?

Attorney General KATZENBACH. No. That is correct, Senator, but it is a response to your question.

Senator ERVIN. Do you know any act of Congress that has been passed since George Washington took his first oath of office as President of the United States which provides that a State could not pass a law that would become effective until that law was approved by a Federal court?

Attorney General KATZENBACH. No, I do not, Senator.

Senator ERVIN. Yes.

Senator DIRKSEN. Will the Senator yield for an observation?

Senator ERVIN. Yes, sir.

Senator DIRKSEN. I thought it rather diverting to go back and examine some of the history of the Constitutional Convention of 1787, and I discovered there were six votes, six States voted to give Con-

gress the power to negative any legislation passed by any State. So they really toyed with a fancy idea way back in the Constitution days.

Senator ERVIN. But they had sufficient intelligence at that early date in the Republic's history to reject any such idea.

Senator DIRKSEN. Well, I sometimes wonder.

Will the distinguished Senator indulge me a little further?

Senator ERVIN. With pleasure.

Senator DIRKSEN. We have been talking about the qualifications of the electors this morning as being those of the most numerous branch of the legislature. I noticed that the first working paper before the Constitutional Convention in 1787 was what was known as the "First Virginia Plan," and they said exactly nothing about the qualifications of electors. Their second plan was presented on the 13th of June 1787 and it said nothing about the qualifications of electors. The New Jersey plan was submitted on the 15th of June and it said nothing about the qualifications of electors.

In the summary that they drew up as of August 6, of all the action taken in the Convention, nothing was ever done about the qualifications of electors. It was not until the 10th day of September, just 7 days before that document came out of that hall in Philadelphia, that they ever said a word about the qualification of electors. And I thought it was rather interesting that in all of the Federalist Papers only Madison in paper No. 52 even bothered to make any comment on it, and his comment was only one paragraph long.

I suppose at some future time I will read that into the record, but for the moment, it just seems to me that they did not attach too much significance to this question of elector qualification, and they just dropped into something that was submitted at the time because evidently nobody had anything better.

They thought something about uniformity as applying to all the States, but they did not do it, of course, and finally left it up to each State.

But there has been so much importance attached to that provision because it appears in article I in connection with the election of Members of the House of Representatives, and I thought it begot undue significance, and I had hoped that perhaps for this record there might be a little more amplification because if that is the basis on which this bill is to be attacked as being in contravention of the Constitution there ought to be an amplified record.

Senator ERVIN. Yes. I can amplify that just a little bit now from my regional history of those times.

Attorney General KATZENBACH. Could I—

Senator ERVIN. The reason they continue—I will listen to you before I do my amplifying.

Attorney General KATZENBACH. My recollection of the history, Senator, and you examined it more recently than I have had the opportunity to do so, was that the reason for putting that section in under the plan that was eventually adopted was the fear on the part of some of the States that Congress might impose more onerous qualifications for voting than the State legislatures were required. They were con-

cerned that Congress would restrict, a thought of the Federal Government as being a more conservative body in several of these States, and that was put in there to prevent Congress from narrowing the franchise rather than to prevent Congress from liberalizing the franchise. That is my recollection of the history.

Senator ERVIN. My recollection is in harmony with yours. My recollection also is that history shows that one of the greatest arguments that they had among the members of the Convention of 1787 was the question of who was going to be allowed to vote for Representatives in the Congress. The reason they did not put it in the plan was because they could not agree on it early enough to even have it in a tentative plan. There was one group that wanted it on the national level, and as the Attorney General suggested, the people who wanted it on qualifications prescribed by the State legislature said if they allowed it on the national level the smaller group could get in control of government and only allow the rich or certain restricted classes to vote for Congressmen and the great bulk of the people would be excluded from the privilege of voting.

There is no mystery in the reason they had it in no tentative plan, because they could not agree on it enough. There was too much controversy to even put it down on a tentative plan. History shows that along with that question of whether the Federal Government should prescribe, whether the Constitution should provide for Congress to prescribe, whether the Constitution would allow the Federal Government to prescribe those qualifications or the States, along with the question as to whether they were going to have equal representation in both Houses or equal or representation in both Houses based on population were two of the greatest controversies that were raised in the Continental Congress.

I assure the Senator from Illinois that my reading of history leaves me with the impression there was far more said on that subject than has been said here by me and the Attorney General both in the last 2 days.

Senator DRICKSEN. If my friend will indulge me, I am afraid it was not quite that simple. In the first place, you had the problem of untaxed Indians; in the second place, you had 700,000 slaves in the Colonies or the States. And the question was how quite to dispose of them politically at least because they had no rights, they were regarded as chattels, and as such how could you count a chattel for voting purposes and yet before they got through they made it possible to count three-fifths of them for purposes of determining representation in the various States of the Union.

Now, I might go on and add a dozen complicating factors in this bundle, that finally came up with an answer and a rather interesting and peculiar answer that left us the great unsolved problem of the Constitution, and that was what to do with this institution after the year 1808. That was the problem that continued until it was arbitrated in blood.

Senator ERVIN. Yes, and—

Senator DIRKSEN. Let me.

Senator ERVIN. Excuse me.

Senator DIRKSEN. It had to be arbitrated in blood.

It was 3 years, it was 5 years after the conflict was over that the 15th amendment to the Constitution was approved, and it is a rather curious thing to me that 95 years later we have the problem of what was reassured in the 15th amendment in our laps all over again, and that is just about 95 years, within 2 days, of the date this committee is supposed to report this bill back, that Abraham Lincoln of my own State was assassinated in this town. That is a curious commentary upon history, that it has taken us so long to get this job done when the language of the 15th amendment is so very specific, that the right to vote shall not be denied or abridged by the United States or any State because of race or color and Congress in the second section of that amendment was given the power by appropriate means to effectuate it, the purposes and objectives of that article of amendment.

So as I go back and look at all these various compromises, it still is curious that it has taken a century, and here we are for the fourth time in this contemporary period trying to solve this problem.

I just wanted it in the record.

Attorney General KATZENBACH. I think that is true, Senator, and there has been a lot of discussion in this hearing with respect to leaving the matter to the courts. It seemed to me that beyond expressly providing for legislation in this, in section 2, that it was clear that the drafters of that 15th amendment placed the greatest reliance on legislative action rather than on executive action or judicial action to implement the right to vote and free it from racial discrimination where the States did not freely grant it. And if I might, I would like to quote from a landmark case, an old one of *Ex parte Virginia* at 100 U.S. 339 at page 345, where, speaking of the 13th, 14th, and 15th amendments the Supreme Court said this:

All of the amendments derive much of their force from the provisions empowering Congress to enact appropriate legislation.

It is not said the judicial power of the General Government shall extend to enforcing the prohibitions and protecting the rights and immunities guaranteed. It is not said that branch of the Government shall be authorized to declare void any action of the State in violation of the prohibitions. It is the power of Congress which has been enlarged. Congress is authorized to enforce the prohibitions by appropriate legislation. Some legislation is contemplated to make the amendments fully effective.

The CHAIRMAN. Would you put in the record the voter qualifications of different States at the time the 15th amendment was submitted?

Attorney General KATZENBACH. Voter qualifications of the States at the time, all the States then members of the Union?

The CHAIRMAN. At the time the 15th amendment—

Attorney General KATZENBACH. At the time of the 15th amendment; yes, Senator.

(The information referred to follows:)

State constitutional provisions for qualifications of electors at the time 15th amendment was submitted for ratification

State and date of State constitution	Male	Citizen of United States or declared intent to become citizen ¹	Age	White	Residence	No conviction of certain crimes ²	Mental competency	Payment of taxes	Property	Literacy	Good moral character	Freemen	Oath of loyalty to United States, or other oath	Special provisions for those who participated in confederacy	Special provisions for Indians	Special provisions for those in military service, students, etc.
Alabama (1867)	X	X	X		X	X	X									
Arkansas (1868)	X	X	X		X	X	X									
California (1849) ³	X	X	X		X	X	X									
Connecticut (1818, as amended 1845, 1956)	X	X	X		X	X	X									
Delaware (1831) ⁴	X	X	X		X	X	X									
Florida (1868)	X	X	X		X	X	X	X	X		X	X				
Georgia (1868)	X	X	X		X	X	X			(5)						
Illinois (1818)	X	X	X	X	X	X	X	X					X			
Indiana (1851)	X	X	X	X	X	X	X									
Iowa (1857)	X	X	X		X	X	X									
Kansas (1859)	X	X	X		X	X	X									
Kentucky (1850) ⁵	X	X	X	X	X	X	X									
Louisiana (1868)	X	X	X		X	X	X					X		X		
Maine (1819)	X	X	X		X	X	X		X					X		
Maryland (1867) ⁶	X	X	X		X	X	X		X						X	
Massachusetts (1780, as amended 1821, 1867)	X	X	X		X	X	X		X	X						
Michigan (1860)	X	X	X		X	X	X	X	X	X					X	

Minnesota (1857)	X		X		X	X	X								X	X
Mississippi (1865)	X	X ¹	X		X	X	X						X	X	X	X
Missouri (1865)	X	1	X	X	X	X	X						X	X	X	X
Nebraska (1867)	X	1	X	X	X	X	X						X	X	X	X
Nevada (1864)	X	X	X	X	X	X	X						X	X	X	X
New Hampshire (1792)	X		X	X	X	X	X						X	X	X	X
New Jersey (1844)	X	X	X	X	X	X	X						X	X	X	X
New York (1846)	X	X	X	X	X	X	X						X	X	X	X
North Carolina (1868)	X	X	X	X	X	X	X						X	X	X	X
Ohio (1851)	X	X	X	X	X	X	X						X	X	X	X
Oregon (1857) ²	X	1	X	X	X	X	X						X	X	X	X
Pennsylvania (1838)	X	X	X	X	X	X	X						X	X	X	X
Rhode Island (1842)	X	X	X	X	X	X	X						X	X	X	X
South Carolina (1868)	X	X	X	X	X	X	X						X	X	X	X
Tennessee ³																
Texas (1868)	X	X	X	X	X	X	X						X	X	X	X
Vermont (1793)	X	X	X	X	X	X	X						X	X	X	X
Virginia (1870) ⁴	X	X	X	X	X	X	X						X	X	X	X
West Virginia (1863)	X	X	X	X	X	X	X						X	X	X	X
Wisconsin (1848)	X	1	X	X	X	X	X						X	X	X	X

¹ Rejected 15th amendment.

² Ratified amendment in 1901.

³ Literacy provision to take effect in 1890.

⁴ Literacy provision to take effect in 1876.

⁵ Applied to "men of color" only.

⁶ Ratified amendment in 1869.

⁷ Qualifications of voters delegated to general assembly pursuant to 1866 amendment.

⁸ Must be of a "quiet and peaceable behavior."

⁹ Approved by the people in June 1869, the 15th amendment was ratified by Virginia in October 1869.

Source: The Federal and State Constitutions and charters, H. Doc. 357, 59th Cong., 2d sess., 1906-07.

The CHAIRMAN. Maybe you know the answer to this one. How many States had a literacy test at that time?

Attorney General KATZENBACH. I do not know the answer to that. I do know that the literacy tests in the States that would be covered by this legislation came subsequent to the 15th amendment in all instances, I believe.

Senator ERVIN. I would like to make it plain that I do not deny the authority of Congress to pass appropriate legislation to enforce the 15th amendment. But what I do say about this bill is that it is not appropriate legislation because this bill would annul two other provisions; yes, three other provisions of the Constitution, and that is not appropriate legislation to try to enforce a provision of the Constitution by annulling three others. Now I want—

Attorney General KATZENBACH. "Annul" is a strong word, Senator.

Senator ERVIN. Well, it annuls for 10 years. I do not know any other word and it does this—

Attorney General KATZENBACH. Senator Dirksen suggested the word "suspends."

Senator ERVIN. Yes; it just suspends for 10 years. It annuls for 10 years.

Attorney General KATZENBACH. As the courts have already done in a number of instances in this country.

Senator ERVIN. I cannot find in the decision where they annulled. They have declared certain things on their face were unconstitutional, it is violation of the 15th amendment.

Attorney General KATZENBACH. No, Senator. They go further than that.

Senator ERVIN. They said in some cases where evidence justified it that they were being misapplied.

Attorney General KATZENBACH. And they have suspended those provisions of State law.

Senator ERVIN. They suspended the State law in Louisiana, nearly all the law until they will have a new registration.

Attorney General KATZENBACH. No, Senator. We have a number of decisions where they have suspended the application of State laws because of their findings that those applied in a discriminatory fashion and they said, "In the future you will not have any new laws and you will not apply the old laws and you will register people on the same basis that, in fact, you have been registering people up to today."

Senator ERVIN. To make the distinction, can you and I agree on the proposition that some of the cases declare unconstitutional a statute because on its face it is not applicable to people of all races alike.

Attorney General KATZENBACH. I cannot think of one that has been annulled which was not on its face applicable to all people.

Now, the grandfather clause cases on their face were applicable to all people. It just so happened that Negroes could not vote on it. But it has said you can vote if your grandfather could vote, and the grandfather, as you know, could not vote because he was slave.

Senator ERVIN. I know, but that was on its face, on its face that was—

Attorney General KATZENBACH. No. On its face it was completely nondiscriminatory. It just said anybody who had a grandfather who voted could vote.

Senator ERVIN. It is like the administration bill here. It went back and said anybody who is a descendant of a man who was eligible to vote on a certain day before the un-Civil War, would be allowed to vote. This is all it says, and on the face of it it was apparent that that was designed to prevent the descendants of slaves from voting because slaves were not allowed to vote on that day. That was invalid upon its face.

Attorney General KATZENBACH. It took a little more than the face. It took also the fact that grandfather—that the criteria invoked slaves who could not be permitted to vote, were not permitted to vote.

If you had given that to somebody totally unfamiliar with that fact, that there had been slavery in the United States, and just gave it to them and you said, "Is this discriminatory against anyone on its face," just read it, if you gave it to a Norwegian or a Swiss or somebody of that kind and said, "Does this discriminate against anyone," and he had not known the fact of slavery he would say "No, it is not discriminatory against any race, it does not say anything about any race in it." You have to know that fact to make it discriminatory.

Senator ERVIN. All he had to do was read a little law. He would not have had to have any facts at all because if he read a little law he would discover that it was invalid on its face.

Attorney General KATZENBACH. Well, the Louisiana provisions which we discussed earlier were the same ones that you read to me and they are not discriminatory on their face.

Senator ERVIN. Yes. I would say they are. That is what Judge Black said. I have the case, and I was very much interested in the case because here is what Judge Black said. I refer to *Louisiana v. United States*, which was handed down on March 8, 1965, which I believe is the case you are referring to.

Attorney General KATZENBACH. Yes.

Senator ERVIN. And here is what Judge Black says. He says:

There can be no doubt from the evidence in this case that the district court was amply justified in finding that Louisiana's interpretation test, as written and as applied, was part of a successful plan to deprive Louisiana Negroes of their right to vote.

He says both as written and as applied. And then in addition to that they had, as the evidence shows, colored people with the most advanced education and scholarships were declared by voting registrars with less education to have an unsatisfactory understanding of the Constitution of Louisiana or of the United States. In other words, both the evidence said that and he says it was written. But, I think, it really goes on the evidence as it shows.

Now, this has some very interesting language which shows that the complaints which Justice Black justifiably raised against the Louisiana test apply to this bill.

I will read from page 7.

The State admits that the statutes and provisions of the State constitution establishing the interpretation test "vest discretion in the registrars of voters to determine the qualifications of applicants for registration" while imposing "no definite and objective standards upon registrars of voters for the administration of the interpretation tests." And the district court found that "Louisiana . . . provides no effective method whereby arbitrary and capricious actions by registrars of voters may be prevented or redressed. The applicant facing a registrar in Louisiana thus has been compelled to leave his voting fate to that offi-

cial's uncontrolled power to determine whether the applicant's understanding of the Federal or State Constitution is satisfactory. * * *

The cherished right of people in a country like ours to vote cannot be obliterated by the use of laws like this, which leave the voting fate of a citizen to the passing whim or impulse of an individual registrar. Many of our cases have pointed out the invalidity of laws so completely devoid of standards and restraints.

Now, under the Louisiana interpretation tests I guess you will admit that either you or I would be disqualified by the registrar to vote because he would have to try in front of us, our understanding of the Federal Constitution. The interpretation of one of us might be satisfactory, and the other not, or he might disqualify both of us.

Attorney General KATZENBACH. I think if that were left to Louisiana the judge would be in a quandary to determine which one would be qualified.

Senator ERVIN. What Judge Black said about this interpretation is applicable to this bill. He says first it had no definite and objective standards, for the administration of the interpretation tests, no objective standards, no definite and objective standards upon registrars of voters for the administration of the interpretation tests.

Now, this bill, subsection 4, provides no definite or objective standards by which the Attorney General is going to determine when he is going to call on the Civil Service Commission to appoint Federal examiners, does he?

Attorney General KATZENBACH. No, that is correct.

Senator ERVIN. That is right. So it has the same defect that this Louisiana statute had.

Attorney General KATZENBACH. Problems are somewhat different, Senator.

Senator ERVIN. Yes. But it ought to be something definite and effective, objective standards. In other words, the whole standard in section 4(a) —

Attorney General KATZENBACH. I am not depriving anybody from voting by the judgment that I make.

Senator ERVIN. No. You are just depriving a State official and local election official of the power to determine the qualification of voting and conferring this job on people to be appointed by the Civil Service Commission.

Attorney General KATZENBACH. That is not quite correct, Senator. There is nothing in my judgment that deprives them of anything.

Senator ERVIN. It deprives them.

Attorney General KATZENBACH. I am helping them.

Senator ERVIN. It deprives them of the capacity to use the literacy test, does it not?

Attorney General KATZENBACH. I do not do that, no.

Senator ERVIN. Oh, yes, you do.

Attorney General KATZENBACH. Oh, no. There is a misunderstanding.

Senator ERVIN. The law does.

Attorney General KATZENBACH. The law does. That is not within my discretion, Senator, in the slightest.

Senator ERVIN. You say you are not depriving them of the right to pass upon qualifications?

Attorney General KATZENBACH. No.

Senator ERVIN. I do not mean you as an individual, but I am talking about the occupant of the Attorney General's office.

Attorney General KATZENBACH. No, there is nothing, appointment of Federal examiner, that deprives the State registrar from examining everybody that comes to him.

Senator ERVIN. But it fixes it so under section 5(a) that the Federal examiners can overrule him, does it not, the State election officials?

Attorney General KATZENBACH. Yes, in effect, that is what it says, yes.

Senator ERVIN. And if the Attorney General, without any definite or objective standard to guide him decides to eliminate the second requirement, the 90-day requirement, he can make it possible for people never to go to the State or local election officials in the first instance, but to go to the Federal examiner.

Attorney General KATZENBACH. That is correct. That is correct, Senator; yes.

Senator ERVIN. Yes.

Attorney General KATZENBACH. The same provisions existed, of course, in the 1960 act with respect to referees.

Senator ERVIN. Yes. But before this starts they have to prove it, that does not rest on the belief of the Attorney General. That rests upon the adjudication of the court after an opportunity to hear evidence.

Attorney General KATZENBACH. It rested on the belief of the judge, once the discrimination had been established as to whether or not it was necessary to appoint registrars or whether or not the State officials would perform their functions properly.

Senator ERVIN. Yes. But that depended on his judgment, but he could only exercise—

Attorney General KATZENBACH. And there were no standards for that set up.

Senator ERVIN. He could only exercise that judgment after a trial in which a finding was made, where there was a verdict of the court.

Attorney General KATZENBACH. Yes.

Senator ERVIN. Yes. Here there is no verdict at all. The Attorney General just reaches a verdict in his own mind without any evidence.

Attorney General KATZENBACH. No; not quite true, Senator, because there is the possibility under 3(c) to go in and have the judgment of a court if there has not been discrimination.

Senator ERVIN. Now, the next thing it says reminds me of this bill, it says "and the district court found that Louisiana provides no effective method whereby arbitrary and capricious action by registrars of voters may be prevented or redressed."

Attorney General KATZENBACH. That is the difficulty with literacy tests generally.

Senator ERVIN. Yes. I am intrigued with provisions of the bill that allow the Government to go in any court it wants to and the other side can only go to one court, if I interpret it right.

I call attention to page 9, subsection (d) of section 9:

Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 2, 3, 7, or 8 or subsection (b) of this section, the Attorney General may institute

for the United States, or in the name of the United States, an action for preventive relief, including an application for a temporary or a permanent injunction, restraining order, or other order, and including an order directed to the State and State or local election officials to require them to honor listings under this act.

Under that the Attorney General can go into any court, can he, that is, in any district court anywhere?

Attorney General KATZENBACH. No, Senator. He can go into district court in which he can get jurisdiction over the persons involved.

Senator ERVIN. Of course. I am assuming any—

Attorney General KATZENBACH. If it is Louisiana, the northern district, that is where he has to go. He can't go into the District of Columbia.

Senator ERVIN. He can go into any district court where they can obtain the service of process upon the local State officials involved; can't he?

Attorney General KATZENBACH. Yes; where he can get jurisdiction.

Senator ERVIN. But on the other side, I invite your attention to subsection (b) of section 11:

No court other than the district court for the District of Columbia shall have jurisdiction to issue any declaratory judgment or any restraining order or temporary or permanent injunction against the execution or enforcement of any provision of this act or any action of any Federal officer or employee pursuant hereto.

Now, the State would have to come up here?

Attorney General KATZENBACH. Yes.

Senator ERVIN. So all of the Federal courts are open to the Government for service of process, and only one court on the face of the earth is open to the State or the local subdivision?

Attorney General KATZENBACH. Congress enacted a similar provision which I am sure you will recall, Senator, in connection with the OPA, where it said that all challenges to OPA orders had to be made to the Emergency Court of Appeals in the District of Columbia.

Senator ERVIN. That was with reference to establishing rules and not with reference to the controversy between them and OPA. I know this because I got involved in cases in the district courts of North Carolina that had to do with that.

Attorney General KATZENBACH. That was challenges to rules. And I suppose that one could say they locked every courthouse door except the one in the emergency court.

Senator ERVIN. They did that in that case, but they had a different situation.

Attorney General KATZENBACH. Yes.

Senator ERVIN. The OPA case established rules that were to apply throughout the United States. The OPA was exercising a quasi-legislative power. And you naturally couldn't have the same rules adopted if you could prove those rules in 49 varieties of courts.

Attorney General KATZENBACH. Yes.

Senator ERVIN. So there was a wide distinction there.

Attorney General KATZENBACH. I don't suppose the fellow who had come all that distance was appreciative of that distinction.

Senator ERVIN. Yes. But he didn't have to drag a lot of witnesses along with him, he couldn't serve subpoenas.

Attorney General KATZENBACH. I would think that he wanted some witnesses on that.

Senator ERVIN. Well, it would seem to me that all court matters should be open to everyone. That is my basic opinion. And I think it is a judicial error for Congress to pass a law to provide that only one court on the face of the earth would have jurisdiction under that law.

I would like to have printed at this point in the body of the record an editorial from the Wall Street Journal of March 22, 1965, entitled "An Immoral Law."

And an editorial from the Wall Street Journal, March 24, 1965, entitled "A Question of Perversion."

The CHAIRMAN. It will be so ordered.

(The articles referred to follow:)

[From the Wall Street Journal, Mar. 22, 1965]

AN IMMORAL LAW

When President Johnson last Monday asked Congress for a new law to safeguard the voting rights of Negro citizens he rested his case on the Constitution and on a basic principle of morality.

What he has now proposed that the Congress do is enact a law which would violate that Constitution he asks us not to flout and, more, which is itself immoral.

If you think not so, consider:

The administration bill offers a formula—a complicated one, which we will come to in a moment—to prohibit certain States from using any test of a citizen's ability to read and write our language as a qualification for voting.

The argument for doing this is the 15th amendment to the Constitution which provides, clearly enough, that neither the Federal Government nor any State shall deprive a citizen of his vote on account of his race or color.

But the proposed bill does not stop with providing means against the violation of the 15th amendment. It does not aim at insuring that any such State literacy test shall be fairly drawn and impartially administered so that it may not be used as an excuse to deprive anyone of his vote on account of his race.

The effect—and indeed the purpose—would be to abolish such tests entirely in the affected States. And that flies squarely in the face of this selfsame Constitution which the President professes to uphold.

The very first article of that Constitution authorizes the individual States to decide the qualifications of voters in both Federal and State elections, subject only to the proviso that whoever is deemed qualified to vote for the most numerous branch of the State legislature is automatically qualified to vote in Federal elections.

Making this a State function was no casual decision. It was reaffirmed in identical language in the 17th amendment—adopted, incidentally, more than 40 years after the 15th amendment, which provided that all such qualifications should be impartially applied among all citizens.

This principle in the Constitution has been repeatedly upheld and affirmed by the U.S. Supreme Court, not merely in dusty antiquity but as recently as 1959 by judges presently sitting upon that Bench.

Now we are well aware that there are a good many people, and perhaps the President is included, who oppose any literacy requirement. They say that a man's illiteracy is irrelevant to the question of having his judgment counted in public affairs. No man can quarrel with the right of such people to argue their case and, if persuasive, to alter the Constitution so as to prohibit them.

But the requirement that voters be able to read and write is by no means restricted to those Southern States now the object of this special legislation. Many others—including New York State—require that qualification, as the Constitution entitles them to do.

If it is immoral, as the President says, to deprive a qualified citizen of his right to vote "under color of a literacy test," is it moral to violate one part of the Constitution under the color of upholding another which is in nowise in conflict?

Nor does the question end there, for what this bill proposes to do is to set up a double standard. Some States would be permitted to keep their literacy requirement. Others would not.

The formula prescribed is that of a ratio between the number of persons of voting age within a State and the number of voters in an election. If 50 percent or more of the voting age inhabitants do vote, then the State is absolved. The Federal authorities will keep out, and the State may set its own qualifications for voters, including literacy tests. Otherwise, no.

This formula has been carefully devised so that in practice it is expected to apply only to six States, Alabama, Louisiana, Mississippi, Georgia, South Carolina, and Virginia. In these States the Federal authorities would not only have the right to supervise voter registration but to abolish the voter qualifications they don't like.

A few moments reflection on this formula will suggest such weird paradoxes, and the possibility of such strange discriminations, as to stagger the mind.

A minor one is that a strict application of the formula would probably make it applicable to Alaska. However, a way has been devised to exempt it, which as much as anything suggests that the intent is not to write a general rule of law but to subject certain States to special laws.

Not so minor, but certainly weird, is the provision that a person once registered as a voter by the Federal authorities will be stricken from the list if he fails to vote "at least once during 3 consecutive years while listed." In short, you have to vote or you can't.

Of more consequence is the fact that if we have this law a citizen, white or Negro, can be entitled to a vote in Alabama no matter how illiterate he is, or for that matter even if he is a moron. But if the same citizen, white or Negro, lives in New York State he will not be entitled to vote.

This would create a truly ingenious paradox. The illiterate citizen, Negro or otherwise, would find himself with more "rights" in Alabama and her five outcast sister States than in the great State of New York. More, the educational level of the voting citizens of Alabama, the low level of which is part of the general complaint against it by civil rights leaders, would be further reduced. And this by Federal sanction.

Unfortunately, the irony is not funny. Beneath the paradox lies a serious question. Is it moral that our national laws should apply one rule to one State and another to another, requiring that the people of one State abolish qualifications for voters while the people of another State may uphold their standards?

Nor is that the end of the consequences of that weird formula. Recall that it permits the Federal Government to put all this machinery in motion, the take-over of the whole voting procedure by Federal authorities, only when the voting percentage of a State falls below 50 percent of the voting age population. If there was ever a device open to what President Johnson calls manipulation, this is it.

So long as a State contrives that one-half of its adults vote, it is free of the formula. This will not be overlooked by ingenious men who can contrive many things when justice is measured by percentages.

And this brings us to what we think is the fundamental immorality of this proposed law, unintentioned though it may be by those who drew it.

Any citizen, white or Negro, has the right to be treated by the law like all other citizens. If he has to meet qualifications to vote—age or any other—they must be only the qualifications asked of all. If he qualifies like any other he has the right to vote, and to deny him that right is to deny him what is inalienably his.

It makes no difference whether 99 percent of his neighbors vote or whether only 20 percent do. It makes no difference whether he has voted in the last three elections, or in none at all before he presents himself at the polls. His right is to vote or not vote as he pleases.

That is the whole of the moral issue. And the whole duty of government, insofar as it touches this matter, is to see that all equally can exercise this right.

The constitutional duty of the Federal Government is to see that this right is not abridged—anywhere; populous States or sparse States, Northern States or Southern States, where many go to the polls or where few take the trouble to. The means of assuring this—everywhere—is what any Federal voting law ought to do, and all it ought to do.

To play with complicated formulas, to measure justice by percentages, and to aim punitive laws at some States, not only violates both the letter and the spirit of the Constitution but buries the real moral question in sophistry.

[From the Wall Street Journal, Mar. 24, 1965]

A QUESTION OF PERVERSION

When the Attorney General began his explanation and defense of the proposed Federal voting bill he adopted a fascinating line of reasoning that deserves more attention than it seems to be getting.

Appearing before a Senate Judiciary Subcommittee, Attorney General Katzenbach made no claim that the Constitution gives to the Federal Government the authority to set voting qualifications in all the several States, nor did he cite any Supreme Court opinions to suggest that the Federal Government has this power.

He hardly could have. For the very first article of the Constitution—reaffirmed by the 17th amendment—lays down only one qualification which the National Government may insist upon; namely, that all voters qualified to vote for the most numerous branch of any State legislature must be qualified also to vote in any national election.

The 15th amendment to the Constitution adds one other, and a very important one; it is that no State may take away the voting rights of any citizen on account of his race or color. And the 24th amendment bars poll taxes as a requirement for voting.

In short, then, the Constitution says this: No State may set higher qualifications for voting in Federal elections than in States ones, that no poll taxes shall be levied, and that every citizen must be treated equally by the voting laws of each State. Within that framework, each State is free to establish its own qualifications as to age, length of residence, literacy and the like.

This view has been consistently affirmed by the Supreme Court. Only 8 years ago, in a case specifically involving a literacy test in North Carolina, the Court repeated that "the States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised." The limitation on that power, in the Court's words, is that they cannot authorize "the discrimination which the Constitution condemns."

So to justify a Federal law to override State voting requirements and permit the Federal Government to eliminate literacy requirements entirely in some States, Mr. Katzenbach had to adopt the line of reasoning that the abuse of a principle condemns the whole principle.

That is, he argues that the Federal Government, under color of the 15th amendment, has the authority to override the constitutional right of some States because literacy tests "have been perverted to test not literacy, not ability, not understanding—but race." And this is sufficient reason for the Federal Government to eliminate them entirely wherever such perversion has taken place.

This argument, please note, is quite different from an argument for a Federal law requiring that all literacy tests be fair and equitable and that Federal authorities be authorized, wherever necessary, to see that it is so.

The fact that literacy tests can be fair and equitable, in fact, is conceded; the literacy test of New York State will be left untouched, as will those in a number of other States. But the distinction is not made on an examination of the individual merits, judicially measured, of such tests. The merits or demerits would be measured, under this law, by how many people vote.

On Mr. Katzenbach's line of reasoning the Congress could have abolished poll taxes—surely a thing susceptible to abuse—by simple statute instead of, as was properly done, by constitutional amendment.

Indeed, on this line of reasoning the fact that police powers are sometimes abused by local policemen—and they certainly are—would become an argument not for halting the abuse but for eliminating the local police powers.

For our own part, we have no reason to doubt that in some places the constitutional principle under which each State sets its own voting requirement has been perverted to deny some people the voting rights they are entitled to. And we agree that this is a strong argument for national action to remedy those abuses, wherever occurring.

But if that is also an argument for alerting the Constitution in unconstitutional fashion, then what the Attorney General of the United States is saying is that one perversion justifies another.

Senator ERVIN. I would also like to have printed at this point in the record the decision of the Supreme Court of the United States in the case of *Louisiana v. The United States*.

The CHAIRMAN. It is so ordered.

(See p. 566.)

Senator ERVIN. And also the *Guinn* case, of which I will supply a copy.

The CHAIRMAN. It is so ordered.

(See p. 566.)

Senator ERVIN. And also the decisions in the *Lassiter* case and the *Williams* case.

The CHAIRMAN. It is so ordered.

(See p. 566.)

Senator ERVIN. And I would like to read a statement here from a North Carolina newspaper by Dr. Beverly Lake, a distinguished lawyer. He says this:

North Carolina has a literacy test for voting. The U.S. Supreme Court has held it constitutional. In 84 of our counties less than half the adults voted last fall. Under this bill North Carolina will be denied the right to continue to apply this wise and valuable law in 84 counties simply because last November most of the adults did not vote. Not only is our literacy test thrown out, but we cannot require any educational achievement at all, not even completion of the third grade in these counties. We are forbidden to require voters to be of good moral character. Another State having exactly the same literacy tests as ours but in whose counties half the adults voted last fall can continue to have its voters meet that test all over the State, but North Carolina cannot. This bill would create second-class States in America, and put North Carolina and many of our sister States, including the great States of Alabama and Mississippi, in the second class. We are no longer to be permitted to make and enforce laws other States can make and enforce.

I think that is a correct analysis of this bill.

Just one other question, and then I am through except for some possible rebuttal.

Now, the 14th amendment provides that no State shall deprive any person of the equal protection of its laws; doesn't it?

Attorney General KATZENBACH. Yes.

Senator ERVIN. And yet, this bill could be applied to North Carolina in such a way as to compel North Carolina to violate the clause of the 14th amendment with regard to equal protection of its laws; couldn't it?

Attorney General KATZENBACH. I don't believe so, Senator.

Senator ERVIN. Well, we have a hundred counties in the State, and this bill could deprive 34 of them the right to apply the literacy test, even though the literacy test has been held constitutional by the Supreme Court. The other 66 of the counties that apply literacy tests could continue to apply it, but under this bill 34 couldn't. And so this bill would require North Carolina to violate the equal-protection laws of the 14th amendment.

Attorney General KATZENBACH. I follow you right up to your conclusion, Senator.

Senator ERVIN. That would be the result; wouldn't it?

Attorney General KATZENBACH. No. The result would be that 34 couldn't unless they could come in and establish that they hadn't been discriminating. The factual result that you state is correct, it is only the legal conclusion that I differ with.

Senator ERVIN. The legal conclusion would be that in the State of North Carolina the literacy test would remain perfectly constitutional and unaffected by the provisions of this bill in 66 counties; isn't that true?

Attorney General KATZENBACH. If that is true, Senator, then the U.S. Supreme Court in the case of *Louisiana v. The United States* violated the 14th amendment, because they suspended the new citizenship test in 21 counties.

Senator ERVIN. And they did that until there could be a reregistration, but they didn't attempt to do it for 10 years.

Attorney General KATZENBACH. Not for the fixed period of time, Senator. But I would suppose that if they denied the equal protection of the law for 1 hour, 1 minute, they would have violated the 14th amendment. I don't think the Supreme Court violated the 14th amendment in that decision.

Senator ERVIN. They decided in the last case that this interpretation of the statute was totally void.

Attorney General KATZENBACH. Yes, sir.

Senator ERVIN. And, therefore, it couldn't apply in the counties which were not party to the case. Isn't that what they did?

Attorney General KATZENBACH. They only suspended its operation in those 21 counties.

Senator ERVIN. Yes; but in this case they suspended its operation—they judged that it was void in its entirety, didn't they?

Attorney General KATZENBACH. Yes.

Senator ERVIN. So they adjudged that it couldn't be enforced anywhere, that is the effect of it in Louisiana?

Attorney General KATZENBACH. No, that is not correct, Senator.

Senator ERVIN. They held it unconstitutional? Justice Black said, "as written."

Attorney General KATZENBACH. No, that was the interpretation test, Senator, there were two tests involved in the case. One of them was totally void. The other was suspended in 21 counties.

Senator ERVIN. But they said that. But you know that doesn't satisfy me, because murder has been committed for a long time, and it has never yet become meritorious, and arson has been committed for a long time, and that doesn't make arson legal.

Attorney General KATZENBACH. No. But under the equal protection clause, Senator, the doctrine has always been that under equal protection reasonable classification can be made. And I think this is a reasonable classification to say that if 84 counties to meet the objective tests of this bill cannot establish that they have not discriminated in violation of the 15th amendment over a prior period of time, it seems to me that it is reasonable for Congress to put those counties in a different classification than other counties that do not meet those criteria. That seems to me to be a reasonable classification.

Senator ERVIN. I have a high respect for your opinion, but that is about the most unreasonable classification ever made, in my judgment, because here is a State, 1 State, 66 of whose counties can have literacy tests and 34 of those counties can't have literacy tests. One county here, because 50 percent of the people voted, can have literacy tests, and the next county, because only 49 and a fraction voted, can't have literacy tests. That shows the absurdity of the whole thing.

Thank you.

Senator TYDINGS. Would you yield?

Senator ERVIN. I am through.

The CHAIRMAN. Senator Hart, do you want to ask him any questions?

Senator HART. I think Senator Tydings—

Senator TYDING. I didn't quite agree with my distinguished colleague as to the analogy of the due process to protection under the 14th amendment, and giving the right of the people to deprive other people of the right to vote by the use of literacy tests or any other type of tests. And I just didn't think that that was a fair analogy. Certainly I appreciate the problem of the 34 counties. But the 34 counties would only be involved if they are using the literacy tests or the understanding or interpretation tests to deprive people of their right to vote. And certainly the people of no State have an inherent right which would be protected by the due process law to deprive other people improperly of the right to vote through literacy or other type tests, qualifications which you may set up.

Senator ERVIN. I seem to have difficulty in bending my thoughts to those of the Senator from Maryland. I never said that anyone has a right to deprive any qualified person of the right to vote. I have never taken any such position.

Senator JAVITS. Mr. Chairman, may we have other questions now at the Chair's pleasure?

The CHAIRMAN. Senator Hart.

Senator HART. Mr. Attorney General, I think that your testimony has been full, and in view of the nature of the questions, I think responsive fully to the concerns of those of us on the committee with respect to the particular bill before us. And I know that it is not a lack of interest in this legislation that would keep my questions to a minimum. But I think that the discussions have been responsive to virtually everything that most of us are concerned with in this record.

For this direct question: Has the Solicitor General participated in the drafting of the legislation that we have?

Attorney General KATZENBACH. Yes, we have.

Senator HART. Has the Solicitor General expressed an opinion with respect to its constitutionality?

Attorney General KATZENBACH. Yes, he has.

Senator HART. And what is his opinion with respect to the bill?

Attorney General KATZENBACH. He believes this bill as drafted is constitutional.

The CHAIRMAN. Is that a written opinion?

Attorney General KATZENBACH. No, sir.

Senator HART. And in the event the question of constitutionality—

Attorney General KATZENBACH. I should confess that the section of my testimony with respect to the constitutionality of the bill was not my own prose, but prepared in the Solicitor General's Office.

The CHAIRMAN. Prepared in his office, by him?

Attorney General KATZENBACH. Prepared in his office subject to his direction, Senator.

Senator HART. And it is the Solicitor General's responsibility to represent the United States and the Supreme Court in litigation involving the constitutionality of any bill?

Attorney General KATZENBACH. Yes, subject to my directive.

Senator HART. Notwithstanding that confident opinion—and it is an opinion certainly that I share—is that the questions that Senator

Ervin has raised will be referred to in debate in the Senate, do you feel that the goal that we seek; namely, the enfranchisement of Negroes against whom discriminatory practices have been directed could be achieved if an additional factor was added to this bill that would more clearly relate the triggering device to discrimination? And, specifically, I have in mind this possibility. And I ask two things with respect to it. First, administratively would it make it more difficult of enforcement?

And, secondly, would it materially enhance the constitutionality? And that second is academic in your mind, because you have no doubt of the constitutionality. What if the Congress were to find that unconstitutional? School districts over a period of years contributed to the low percentage of voter participation, and the burden that you would have 3(c) actions would be to prove, not only earlier practices, but you would have to find that originally not alone just 50 percent, less than 50 percent of the eligibles registered, but also that in that jurisdiction school districts have been operated on an unconstitutional basis up until the year of the *Brown* decision, or even subsequently, or recently, would this improve materially the constitutional strength of the bill?

Attorney General KATZENBACH. Thank you, Senator, I think it hurts.

Senator ERVIN. May I inject myself here to say that the Constitution permitted segregated schools until 1954, and nobody has gotten to be more than 11 years older since that time. I don't think anybody 11 years of age can vote anywhere in the United States.

Attorney General KATZENBACH. But the fallacy of that argument, Senator, is that from—what, 1896?—it was required by the Constitution, according to the Supreme Court, as it was then interpreted, that the schools be equal even though they be separate. So I think the substantive point that the Senator from Michigan is making would be valid as to people who are voting now, that is, if it had been a violation of that provision of the law, not necessarily the *Brown* decision in 1954. But if you could establish that the schools which were separate were in fact equal—

Senator ERVIN. We are not going back to establish that, because there were decisions that I know of which had to do with it.

Attorney General KATZENBACH. Senator, I would most respectfully suggest that there is quite a bit of evidence in many locals that the separate schools for Negroes were not in fact equal schools. We have a great deal of data which would tend to establish that point.

But I maintain the position, Senator Hart, that it would really make the constitutional position more difficult.

Senator HART. Why?

Attorney General KATZENBACH. Because this is done under the 15th amendment. And I believe that the criteria suggested here—and I know that there may be some that differ—the criteria suggested here are directly related to the discrimination with respect to voting in violation of the 15th amendment. I think it confuses that issue to say that violations of the 14th amendment which are established are to be read into the 15th amendment, which is what in effect you would be doing in saying that violations of the 14th amendment amount to violations of the 15th amendment. I just think that is a difficult argu-

ment to make. I think that, as I said in my testimony, there is a justification for the act in nonlegal terms in many respects, at least with respect to the problems of reregistering, and why that would not be an effective solution, I made that point in my prepared statement. But I think it would just complicate the argument. I don't think it would help the constitutionality of the bill. And while I am persuaded, and attorneys whose opinions I value and have consulted on this in the Department of Justice are persuaded, that this bill is constitutional, I don't want to take the position that there are not amendments that could not be made to this which would make that argument easier. There may be some. I don't happen to think that this particular suggestion is one of them.

Senator HART. And the only other specific point made that I wanted your comment on the record was, I think, raised this morning by Senator Javits. And I shall not raise it in the same fashion he did. He expressed the point of view that some of us that it would be desirable—and I think you said you were assured of that—to eliminate the poll tax.

Attorney General KATZENBACH. Yes.

Senator HART. But you expressed some doubt with respect to the availability of any evidence from history to put you in a position to argue that the poll tax had in fact been used as a device to discriminate and, therefore, was a violation of the 15th amendment.

Attorney General KATZENBACH. Yes.

Senator HART. I would like you to describe to what extent that particular question was studied, or whether your comment was in reply to a question that was fired at you here, have you considered recently or for a long period of time the possibility of taking the straight opposition that, going back to legislative debate, some of the States, when they enacted the poll tax, and running down, have you considered the possibility of taking the position that it was intended from birth and through its lifetime to be a means of disenfranchising the voters?

Attorney General KATZENBACH. To answer your first question, it was not simply in response to a question here. We did during the period that this bill was being drafted consider that, and we felt that it would be a difficult point to establish even though there is evidence that the poll tax was so intended, at least by some of the people in the State legislatures who supported and put in a poll tax.

The CHAIRMAN. Would you yield?

Senator HART. Yes.

The CHAIRMAN. Isn't it true, that in my State, the poll tax originated during Reconstruction by a Negro legislator? Isn't that the history of it in my State?

Attorney General KATZENBACH. I accept the chairman's word on that. I wouldn't have an independent recollection of when it came into the State of Mississippi, but I am sure that you are accurate in your recollection.

The CHAIRMAN. Now, what would you think of an amendment to this bill that would make it criminal with a penalty for one person to pay another's poll tax, or loan another person money with which to pay his poll tax? You take some organizations like the CIO, they could go down there and pay thousands of poll taxes in order to have

these people vote. What do you think about such a method? I think it is a good way to corrupt an election.

Attorney General KATZENBACH. I don't think it has anything to do really with directing an election, Senator. They are not paying for the vote when they pay the poll tax. I would think it would be almost impossible to administer a law of that kind. I, for example, have a loan at the bank. And I don't know whether the \$1.75 that I might pay came from that loan or came from independent sources or something else.

The CHAIRMAN. Now, there is no point in making a ridiculous statement like that. Of course, it wouldn't apply to loans in a bank. But where people go out and loan money to pay poll taxes wholesale, knowing at the time the money is not going to be repaid, what is your judgment as to whether we should make that a criminal act with a penalty in an amendment to this bill?

Attorney General KATZENBACH. I would be opposed to it, Senator.

Senator HART. Just one more point on the poll tax. And your comment made earlier to Senator Javits.

If two points of fact could be developed, first, that the initial application of the poll tax came from a legislature or a State constitutional convention wherein its exponents described it as a means of preventing Negroes from voting; and, second, over the course of the application of the law in a particular State it was not collected systematically from whites but was always demanded of Negroes, with that combination together, wouldn't you then have a 15th amendment case that would be strong?

Attorney General KATZENBACH. I should think so, Senator, yes.

The CHAIRMAN. Senator Tydings.

Senator TYDINGS. I have a couple of questions, Mr. Chairman.

Mr. Attorney General, on section 3(a) of the bill where it refers to 50 percent of persons of voting age, what about the situation where you have a county or where you have more than 50 percent of the people voting, but some sort of a test or device which kept 1 or 2 or 3 percent of the eligibles from voting, how would they be protected under this law?

Attorney General KATZENBACH. They wouldn't.

Senator TYDINGS. Why did you put such a provision in the law?

Attorney General KATZENBACH. We felt that there might be isolated instances like that that we could effectively use the provisions of the 1957, 1960, and 1964 acts to deal with counties that might be outside the scope of this law. We felt that that would be adequate. We were unable to draft a law that—perhaps some of us can—we were unable to draft a law where we could have the same objective criteria which we felt would stand up constitutionally and still cope with this kind of situation. We felt that we could cope with it under existing laws, although perhaps not entirely satisfactorily. It wasn't done from a desire to permit any discrimination in voting, but merely because we couldn't devise a better law than this to deal with it.

Senator TYDINGS. Thank you.

On page 3, down in line 17—and this is a provision in the law which has to do with the right of a State or subdivision to appeal to a three-judge district court for declaratory judgment that they have not been

engaging in any discriminatory practice, and have an examiner procedure—down in line 17 it reads:

No declaratory judgment shall issue under this subsection with respect to any petitioner for a period of ten years after the entry of a final judgment of any court.

And you will recall that there was some discussion yesterday about what that final judgment of any court meant. And I am not clear in my mind whether that final judgment of any court would also refer to a declaratory judgment handed down under the provisions of subsection (c), because it would make a difference—

Attorney General KATZENBACH. It was not our intention to do so.

Senator TYDINGS. In other words, a judgment under the declaratory judgment procedure would not act as a restriction for a State coming in again?

Attorney General KATZENBACH. That is correct.

Senator TYDINGS. To make it clear, the situation would arise if the State initially—if the acceleration procedure went into effect and an examiner was appointed and the State petitioned in the district court, and the District of Columbia court said, we do find that you have had a discriminatory practice, and we won't issue a declaratory decree. And the State goes ahead and corrects its situation, and 2 years later the State files another petition with the District of Columbia District Court, then this petition here would not act as an automatic bar for that State coming in again, and the second time they might have taken care of the situation, and the court could conceivably find that the situation had been remedied, and that there were no discriminatory practices and therefore the examiners would be removed?

Attorney General KATZENBACH. That is correct.

Senator TYDINGS. Finally, on page 11, subsection 11(b), you have the paragraph:

No court other than the District Court for the District of Columbia shall have jurisdiction to issue any declaratory judgment or any restraining order or temporary or permanent injunction against the execution or enforcement of any provision of this Act.

Why do you feel it necessary to prohibit any district court anywhere in the country from acting under this except the District of Columbia court?

Attorney General KATZENBACH. Because originally the determinations are to be made in the three-judge court in the District of Columbia, Senator. And it seems to us that if the integrity of that practice were to be preserved, then you had to have a corresponding provision here, otherwise you are going to have the act tested in a variety of different courts. So it seemed to us that the important thing was to get this act tested, to get it tested in one court, and not to interfere with the jurisdiction of that court, and provide an appeal to the Supreme Court.

Senator TYDINGS. I am in complete sympathy with what you are trying to do. But are there any other such similar statutes or laws where they would restrict it, say, to the district court of Maryland, or any other State?

Attorney General KATZENBACH. Well, the OPA example would be one.

Senator TYDINGS. That is all, Mr. Chairman. Thank you.

The CHAIRMAN. Senator Javits.

Senator JAVITS. Mr. Attorney General, section 3(a) of the administration's bill applies "in any Federal, State, or local election," line 5, page 2. Does that include primaries?

Attorney General KATZENBACH. Yes.

Senator JAVITS. Now, should not that be spelled out somewhere in the definitions?

Attorney General KATZENBACH. I think it is unnecessary, but I would have no objection to a suitably broad definition.

Senator JAVITS. But that is the intention of it?

Attorney General KATZENBACH. Yes, it is, Senator.

Senator JAVITS. Now, I am very interested in the scheme of this bill, Mr. Attorney General, and I would like to be sure that it is very clear—I believe it is, but perhaps it is not. Does this bill apply to a State which does not have any test or device as a qualification for voting as defined in section 3(b), page 2, lines 13 to 22?

Attorney General KATZENBACH. No; it does not, Senator.

Senator JAVITS. So that even though there may be broad-scale discrimination in violation of the 15th amendment in counties of States or perhaps even in entire States—though I doubt that is so—which have no test or device or what is commonly known as literacy tests, you would not be reaching under this bill those situations?

Attorney General KATZENBACH. That is correct, Senator.

Senator JAVITS. Can you give us—

The CHAIRMAN. Would you repeat that question? You are talking about New York?

Senator JAVITS. No. I might say for the information of the Chair that I would be quite happy to adopt a sixth-grade education which would eliminate New York's literacy tests which bar Puerto Ricans who speak only Spanish.

The CHAIRMAN. What was your question?

Senator JAVITS. The question related to something else.

My question is, Does this bill apply to a county or a State in which there is discrimination and denial of voting under the 15th amendment which does not have a test or device, or, in common language, a literacy test as a qualification to vote?

Attorney General KATZENBACH. No; it does not, Senator.

Senator JAVITS. Now, what is the rationale, Mr. Attorney General, for that distinction?

Attorney General KATZENBACH. The rationale for that distinction is that we have found that these tests and devices have been the most frequently used method of discrimination against Negroes. And therefore, because they have been so used, it was to eliminate their use for that purpose in those areas as tested by the protection provision that we drafted the bill in this way.

As I said earlier to Senator Tydings, I don't know of any way of drafting a bill to reach other areas of discrimination unless a formula similar to that of section 3(a) can be derived. I don't know of places other than these where these tests and devices have been used to discriminate against Negroes. Now, it may be that such instances exist in some place, but I don't know where they are. I think there are some areas—I would have to qualify that—I think there are some

areas in northern Florida, for example, where there may be discrimination. And I believe, as I said to Senator Tydings, that we could deal with those areas under the provisions of the prior laws.

But it wasn't drafted to exclude any areas where discrimination was practiced, it was just that we lacked the skill and ingenuity to find a formula that would accomplish that result. If the Senator has one, I would be happy to hear it.

Senator ERVIN. If the Senator would yield, are you going to apply this law to some counties in northern Florida?

Attorney General KATZENBACH. No. I said Florida has not literacy tests. But I believe that discrimination in voting does exist in some counties in northern Florida, and they would not be covered by this bill.

Senator JAVITS. Now, you took one of keys—

Attorney General KATZENBACH. I can't state that as a fact, but it is my belief that there may be discrimination. Since I have no evidence of that, I don't wish to state it as a fact. It may be the case.

The CHAIRMAN. Now, you stated yesterday that the reason that only 44 percent of the qualified voters in the State of Texas cast a ballot last year was on account of the poll tax.

Attorney General KATZENBACH. Yes.

The CHAIRMAN. Have you got any basis for that assertion? Have you made any investigation in the State of Texas?

Attorney General KATZENBACH. Not an investigation. I have sought the opinions of those familiar with the situation in the State of Texas. And they have ascribed to that low figure.

The CHAIRMAN. Who are those individuals you have talked to?

Attorney General KATZENBACH. The people?

The CHAIRMAN. Yes.

Attorney General KATZENBACH. I have talked to people from Texas familiar with it, a number of them, some people within the Department of Justice and some people outside of the Department of Justice, and asked for an explanation of this figure. I think on their part as well as my own it rests no nothing but a judgment, they think that this is probably the reason.

The CHAIRMAN. But you haven't made any investigation to determine the fact?

Attorney General KATZENBACH. No, Senator.

Senator JAVITS. Mr. Attorney General, you took as a considerable basis for the kind of statute that you would propose to us the figures which showed grave deficiencies in the number of people, primarily Negroes, registered in proportion to the total eligible population in various States, is that correct? You gave heavy weight in your consideration of what kind of a bill to draft to that kind of evidence?

Attorney General KATZENBACH. For the Negro population in general it is difficult to get accurate statistics for the kind of purposes you would need under section 3(a), with respect to Negro registration, for the reasons I discussed earlier with the chairman, it is very difficult to get accurate figures, and the State doesn't keep them in that way. But I believe that there are some substantial non-white populations in all of the States which would be covered by this, with the possible exception of Alaska, and I think there may even be a pretty substantial nonwhite population there.

Senator JAVITS. Would you consider as an eligible source for the kind of consideration you gave this matter the U.S. Commission on Civil Rights?

Attorney General KATZENBACH. I think it is a source, I don't believe it would satisfy the criteria that a court might ask on this, I don't think their figures are that accurate.

Senator JAVITS. I wasn't asking about a court, Mr. Attorney General, I was asking you, you promised your desire for legislation on certain findings that you made and certain figures that you had gotten.

Attorney General KATZENBACH. Yes.

Senator JAVITS. I assume your figures on Negro voting may not satisfy a court, because we don't know.

Attorney General KATZENBACH. Yes.

Senator JAVITS. But would you consider the U.S. Civil Rights Commission a good source for you to use in your design of a bill?

Attorney General KATZENBACH. I don't want to cast any reflection on their figures, Senator. But we have found them to be inaccurate in some instances.

Senator JAVITS. You still haven't answered my question.

Attorney General KATZENBACH. I don't know what you mean by a good source for me to use. I don't think they would be a good source on which to premise a statute.

Senator JAVITS. Would you treat with respect and consideration worthy of your evaluation figures of the U.S. Civil Rights Commission?

Attorney General KATZENBACH. Yes, for certain purposes, Senator.

The CHAIRMAN. For what purposes?

Senator JAVITS. We will find out, Mr. Chairman. I will pursue it.

Those figures show for 22 counties in Arkansas, 5 counties in Florida, and several counties in Texas, 11 counties in Texas, that the voting of the Negro population in those counties was less than 25 percent of the eligible voters. Now, was any consideration given by you in designing the plan of this bill to those facts or facts of that character with respect to these other States and counties of those other States which would be unaffected by the administration's bill?

Attorney General KATZENBACH. Yes, sir.

Senator JAVITS. And give us your thinking on that.

Attorney General KATZENBACH. We didn't believe that those figures were sufficiently accurate on which to premise a triggering clause of the kind that is suggested in section 3 (a).

Senator JAVITS. Now, a triggering clause would require a finding, would it not, that there was discrimination in voting by virtue of the triggering you adopted. And as I understand it—and you tell me if I am wrong—you felt that a trigger of 50 percent or less of voting by the whole population would represent to a court a legitimate finding that there was discrimination in violation of the 15th amendment, whereas a trigger of, let us say, less than 25 percent of the total number of Negroes voting would not?

Attorney General KATZENBACH. No, Senator. If we had accurate figures on the number of Negroes voting, then I would think that that might serve as an adequate trigger. I was trying to use here figures which were really inconsistent. They came from the census. And in addition, we simply felt that, while I think the figures from

the Civil Rights Commission as good as any other figures—I don't wish to cast any doubt upon them—they didn't seem to me to have the finality of census figures, because they must be based to a large extent on figures derived from and provided by the States themselves. And we came across anomalous situation, like the one that I cited in the other body, where, for example, more people voted in West Virginia, according to the census, the vote count there, than the State of West Virginia said were registered.

Senator ERVIN. May I make the observation that the Civil Rights Commission reported that Clay County, N.C., was discriminating against Negroes in registration when there was not a single Negro living in the county, which bears out the observation that some of our figures are not very accurate.

Senator JAVITS. I gather, therefore, that the Attorney General decided that he was on a sound ground if he used only overall voting figures rather than make any effort to pin his figures to voting by Negroes; is that correct?

Attorney General KATZENBACH. Yes, because I thought if we pinned it to the other we would have to go to litigation with respect to the validity of the figures used, and I didn't see how we were going to defend these, if you could find mistakes and errors of this kind.

Senator JAVITS. You would have to go through litigation for the figures you used, would you not?

Attorney General KATZENBACH. No.

Senator JAVITS. You provide for litigation right in your own bill, you provide that anybody can come to the District of Columbia and disprove it?

Attorney General KATZENBACH. No, Senator.

Senator JAVITS. You don't feel that?

Attorney General KATZENBACH. That is not correct, Senator.

Senator JAVITS. Just give me the correct part of it.

Attorney General KATZENBACH. We say that if you are within these figures, you can't contest the findings in 3(a), but you can say that you haven't discriminated.

Senator JAVITS. You can show that you have not discriminated?

Attorney General KATZENBACH. Yes, but you can't contest the figures.

Senator JAVITS. Wouldn't you give exactly the same rights if you got much closer to the target and allowed disapproval for discrimination if the standard was fixed at—according to the best information that the President had, he found that less than 25 percent of the Negroes in a particular area were voting—if you fixed a standard like that, wouldn't you get closer to the target, because you would reach more places where there was discrimination? They would have the legal right anyhow to come in and disprove it; you are giving them that. You say that is sound constitutionally, and I agree with you. Why not extend it so that you really hit the target?

Attorney General KATZENBACH. Because I have reservations that that would be sound constitutionally, Senator. It would seem to me that we could take published figures of the kind in the Census Bureau, and apply those, and make those figures incontestable. I would think that to use figures such as those you suggest—they could be used, you could take them from any source of that kind that you wished—but I

would think then not only have to prove that you have been discriminating, but you would also have to open up those figures to judicial review. I don't think you could do that; you couldn't use those figures and say, now, you can come in and contest the figures. I believe that figures derived as the Civil Rights Commission derived them could probably be successfully contested.

Senator JAVITS. Now, you do give the right to the individual to continue to vote even while the contest goes on; that is correct, is it not?

Attorney General KATZENBACH. Yes.

Senator JAVITS. And you do provide that the contest must be made in a certain court?

Attorney General KATZENBACH. Yes.

Senator JAVITS. And you do provide that the contestant must initiate the contest?

Attorney General KATZENBACH. Yes.

Senator JAVITS. Then what would you care if they contested the figures on Negro voting? If they can disprove it, let them disprove it. The voting would go on just the same, and the irremedial damage of being deprived of a vote in violation of the 15th amendment would not have been imposed upon the voter.

Attorney General KATZENBACH. Unless, of course, the court could—and in my judgment it could under this statute—while the determination was being made under section 3(c), I think that court could enjoin the application of this act pending the determination of the declaratory judgment.

Senator JAVITS. Now, the bill is very explicit. It reads as follows:

If the court determines that neither the petitioner nor any person acting under color of law has engaged during such period in any act or practice denying or abridging the right to vote for reasons of race or color, the court shall so declare and the provisions of subsection (a) and the examiner procedure established in this Act shall, after judgment, be applicable to the petitioner.

Now, doesn't that clearly imply, then, that in the interim it shall be applicable? And do you still feel that that is a nullity, and the court can disregard that and go ahead and issue a stay anyhow?

Attorney General KATZENBACH. I don't say that that is a nullity, and I don't say that the court would disregard it. I see nothing in this provision as it is presently drafted that would prevent a court, this court, from issuing an order restraining enforcement of this act against this petitioner unless that determination has been made. If the court did not issue such a statement, this act would be applicable.

Senator JAVITS. So we come down to the narrow proposition—and correct me if I am wrong—we come to the narrow proposition that as the matter stands now, the court would stay these proceedings while a State was endeavoring to prove that it did not discriminate.

Attorney General KATZENBACH. Yes.

Senator JAVITS. And if you use that provision, section 201(a) of S. 1517, to meet these cases to which I have referred, then the court could stay just the same while it is considering not only the claims of the States or subdivisions that didn't discriminate, but the allegation that 25 percent—the finding that 25 percent or less of Negroes actually were voting, is that correct?

Attorney General KATZENBACH. Yes, Senator.

Senator JAVITS. It wouldn't be any constitutional question, it would just be a narrow question of what State of fact the courts would be considering under section 8 (c) which you have in the act?

Attorney General KATZENBACH. I don't see how a State would contest those figures. I don't know how on earth you would prove the accuracy of those figures, particularly when the Civil Rights Commission themselves say that registration figures vary widely in their accuracy. The burden would be to show the accuracy of those figures. And I think they would be very hard put to show the accuracy of those figures.

Senator JAVITS. Whether or not they would be hard put, all that I am trying to get from you—

Attorney General KATZENBACH. I don't think it would accomplish anything.

Senator JAVITS. I think you would accomplish a great deal, and you would reach the total target of discrimination which you are not reaching by this bill, definitely.

Attorney General KATZENBACH. One, it wouldn't reach the total target if the figures are no good and they are easy to get at, it wouldn't touch it. It would increase the litigation, you would have more litigation on the subject.

Senator JAVITS. I assume that the U.S. Civil Rights Commission would just as stubbornly defend its figures, or at least be entitled to some credit, as you are today in dismissing it, since it is a responsible Government agency.

Attorney General KATZENBACH. They didn't defend it in the introduction, they said registration figures themselves vary widely in their accuracy.

Senator JAVITS. Nonetheless, they issued figures which they represented to the world as figures accurate enough for them to issue under their imprimatur as a distinguished commission of the United States. And they found in their report that there was discrimination in voting in those very counties, they found that as a fact. Now, would you rank them as an agency entitled to the same accreditability as the Attorney General?

Attorney General KATZENBACH. I would certainly say that they are a responsible agency, and their figures deserve all the accreditability which figures derived in that way are entitled to.

Senator JAVITS. Mr. Attorney General, would you agree with me, then, that when we talk about whether or not to include any such figures as I have referred to, we are talking about policy, not constitutionality?

Attorney General KATZENBACH. I was talking about constitutionality. I agree with you on the policy, we should attempt to include those areas if we can.

Senator JAVITS. Would you consider, therefore, do I understand you to say that you would consider such a provision to be unconstitutional, whereas your provision for 50 percent is constitutional?

Attorney General KATZENBACH. Yes, Senator—unless you give them the opportunity to contest those figures, I would think the burden of establishing the correctness of those figures would be upon the Government in those instances, I don't see how you could meet that test. So I think it would be—I am afraid that the effort to do it in that way,

Senator—we certainly considered that approach, and we felt we would be holding out a promise, which would be a futile one.

Senator JAVITS. Now, the figures that you have, that is, the 50-percent figures, are based on the census, whereas these would be based on estimates, is that right?

Attorney General KATZENBACH. Yes; that is right.

Senator JAVITS. And they would raise an additional question of fact?

Attorney General KATZENBACH. Yes.

Senator JAVITS. Who has the burden of proof now in a litigation, in your judgment, under section 3(c)?

Attorney General KATZENBACH. The burden of proof on the discrimination issue, because it was the State or political subdivision.

Senator JAVITS. Nonetheless, you feel that you couldn't apply the same provisions to the burden of proof on the factual finding that there was discrimination in other districts against the 15th amendment which did not have a literary test?

Attorney General KATZENBACH. Yes, I would think that would be very difficult, Senator.

Senator JAVITS. Do you think it would be difficult enough to make the difference between constitutionality and unconstitutionality, unless you put the burden of proof on the Government?

Attorney General KATZENBACH. I would think that it might well, Senator.

Senator JAVITS. Suppose you put the burden of proof on the Government and had another title of this bill to cover that situation, what would be wrong with that? That would be an improvement over the acts of 1957 and 1960; would it not?

Attorney General KATZENBACH. I think that would be all right, Senator, except that I doubt if we could ever get that burden.

Senator JAVITS. Nonetheless, you haven't been able to meet the burden with 1957 and 1960 either, because you are here now with new legislation for examiners. Why not therefore give the examiners a remedy in a case where you can meet that burden? You wouldn't be unable to meet it in every case.

Attorney General KATZENBACH. I was using the word "burden," I think, in a different sense there.

Senator JAVITS. I meant the burden of proof on the figures. Do you see anything unconstitutional about it, therefore, if we did put the burden of proof on the United States in such a case?

Attorney General KATZENBACH. No. I think that would be constitutional.

Senator JAVITS. And that would make the difference between constitutionality and unconstitutionality?

Attorney General KATZENBACH. I think it might.

Senator JAVITS. I thank you.

Now, I have just a few other questions, Mr. Attorney General. I would like to come to the poll tax business, a matter which interests me greatly. I notice that you provide for the examiners to be collection agents for the poll tax.

Attorney General KATZENBACH. Yes.

Senator JAVITS. Do you think that is a good moral position for the United States?

Attorney General KATZENBACH. It is a very good practical position if these people get to vote. I dislike collecting poll taxes and supporting legislation which does that, but I am more interested in getting people to vote than I am in the distastefulness of collecting a poll tax.

Senator JAVITS. May I point out to the Attorney General that I, too, am a cosponsor of this bill, so I am making not moral judgments. But I would just like the Attorney General's view.

Attorney General KATZENBACH. I don't like the poll tax, I have tried to make it clear that I don't like the poll tax. But there are legal problems involved and constitutional problems involved.

Senator JAVITS. Now, as to the poll tax, you only call for the collection of 1 year's poll tax, and that is to be paid, as I understand, to the examiner.

Attorney General KATZENBACH. Yes.

Senator JAVITS. Now, isn't it a fact that if you do that, you are immediately suspending certain State laws as to accumulated poll tax?

Attorney General KATZENBACH. Yes.

Senator JAVITS. And you have explained that you think that that can be done—and again correct me if I am wrong—because of the heritage of denial of the right to vote, therefore the poll tax was not earned?

Attorney General KATZENBACH. Correct.

Senator JAVITS. Now, isn't it a fact also that you would be suspending that part of the State law which calls for paying the poll tax in future at a certain time?

In other words, you say specifically that he can accept them without any regard to when the State requires them to be paid?

Attorney General KATZENBACH. Yes.

Senator JAVITS. Now, in some States—and will you correct me if I am wrong—I think one of them is Mississippi—you have to pay your poll tax over a year before you seek to exercise the right to vote.

Attorney General KATZENBACH. Yes.

Senator JAVITS. So that this bill sort of cuts the line at the point that you will not collect all poll taxes, you would collect new ones, and you would collect them as the United States pleases rather than as the State provides?

Attorney General KATZENBACH. With reason.

Senator JAVITS. With reason. Now, by the same analogy—and again in order to implement the 15th amendment assurances that there shall be no discrimination, and there having been no discrimination, that we apply appropriate action to see that people get their right to vote—why can't we sweep the poll taxes aside, if you can sweep aside the State law in part, why can't we sweep it aside entirely?

Attorney General KATZENBACH. The reason, Senator, was that we felt that the people have been discriminated against in the administration of literacy tests, that they had no incentive to pay poll tax. They couldn't register to vote. And therefore, if they had no incentive to pay that poll tax, being unable to register to vote for other reasons, that by an implementation of the 15th amendment we could make provision for the payment of that poll tax once those other unconstitutional barriers had been removed.

So we attempted to do it in just that way. In other words, we swept it away in part, because we swept away that part which was related to the 15th amendment.

The CHAIRMAN. Yes. But the question was if you had the power to sweep it away in part, why didn't you have the power to sweep it away altogether?

Attorney General KATZENBACH. I was coming to that. I was saying that we swept away that part of it which we believed you could show was in violation of the 15th amendment and necessary for its enforcement. We did not sweep away that part of it which we did not think we could show to be a violation of the 15th amendment.

The CHAIRMAN. I think Senator Javits is making a very fine argument as to the constitutionality of this bill.

Senator DIRKSEN. We suspended it, we suspended the poll taxes in the past, for the very simple reason that he didn't get anything for his poll tax, he couldn't vote.

Attorney General KATZENBACH. That is right, because he was discriminated against on other 15th amendment grounds.

Senator JAVITS. Now, do you then connect this denial of opportunity to vote, which means that he shouldn't pay his back poll tax, also with the timing as to when he should pay it currently? What do you say about that? That changes the State law in futuro.

Attorney General KATZENBACH. Yes. And we do that for the reason that in many States the payment of the poll tax would be required so far back in terms of time in relationship to the date that he voted that he wouldn't have an opportunity, and it would be all the way back to a time when he was being discriminated against and didn't have an opportunity to register. Therefore, to cut that away, we said it was sufficient if he paid his poll tax at the time of registration and before voting on this one chart only proposition. And that was very nicely done—most States that have a poll tax, Senator, do require the payment of that quite some time in advance of voting in the election. And I believe it is correct, as you stated, that it is 19 months in the State of Mississippi, and—I have forgotten, 6 or 10 months in Virginia.

Senator HRUSKA. Six.

Attorney General KATZENBACH. Six. But it is quite a period of time before the election. And other States vary in that. And I think it is quite a time before in Texas as well.

The CHAIRMAN. What is so horrible about a poll tax? It is nothing in the world but a contribution to the schools in my State. And it was passed by a Reconstruction legislature.

Attorney General KATZENBACH. Senator, my own views on the poll tax, the reason I don't like the poll tax is that I don't think people should have to pay money for the privilege of voting.

The CHAIRMAN. That is something that is to be decided in the State itself. The amount is so small that it certainly doesn't keep any person from voting. They are not that poor.

Attorney General KATZENBACH. The amount is generally small.

The CHAIRMAN. \$2 a year.

Attorney General KATZENBACH. I think it serves as an obstacle to voting. And the reason that I use this in talking about the Texas figures is because you have got to pay your poll tax, you have got to

remember to pay your poll tax, and then you have got to pay it before you even know who the candidates are.

The CHAIRMAN. You pay it when you pay your other taxes. And a person over 60 years of age is exempt.

Attorney General KATZENBACH. Over 60?

The CHAIRMAN. Yes, sir. In some States veterans are exempt.

Attorney General KATZENBACH. Yes, sir.

The CHAIRMAN. I don't see where it keeps anybody from voting.

Attorney General KATZENBACH. Well, it has been used in a discriminatory way sometimes, at least according to the courts. The Fifth Circuit found that it was discriminatorily administered in Tallahatchie County, Miss. And I think it presents a possibility of discrimination.

The CHAIRMAN. Anybody can pay it, anybody, white or black, if they have got the money, can pay it.

Attorney General KATZENBACH. Well, there have been problems, Senator, on that, because if a fellow doesn't think he can get registered to vote, he hasn't got much incentive to pay it and, if, as in Tallahatchie County, he has got to go down and pay it to the sheriff who is not in Tallahatchie—

The CHAIRMAN. Where in Tallahatchie?

Attorney General KATZENBACH. I don't know where. The case was the *United States v. Dogan*, and the sheriff's name was Dogan.

The CHAIRMAN. I knew him.

What do your records show about Panola County, Miss.? I just want to see how accurate your records are.

Attorney General KATZENBACH. This is a pretty good county in Mississippi, because there was a lawsuit up there. Do you want the figures for 1964, or for other years, Senator? I have the figures for 1961, early 1963, late 1963, and then 1964. Do you want them all?

The CHAIRMAN. Yes, sir.

Attorney General KATZENBACH. Well, on October 22, 1961, there were 7,639 white persons of voting age, and 4,755 were registered, which was 62 percent.

For the same date, Negroes, there were 7,250. One was registered, which is 0.0404 percent.

Senator DIRKSEN. How many were registered?

Attorney General KATZENBACH. On the date March 21, 1963, the same—

The CHAIRMAN. Since the suit, how many were registered?

Attorney General KATZENBACH. Since the suit?

The CHAIRMAN. Yes.

Attorney General KATZENBACH. The suit was decided on May 22, 1964, and the order was issued sometime after that before the end of 1964. And since that date in the registration process, 430 whites have applied, and 417 have been accepted, and 13 have been rejected. There were 1,037 Negroes who have applied, and 854 have been accepted and 183 rejected.

The CHAIRMAN. The point is, why do you need this drastic bill? Why can't it be done by the laws on the book? I think that county is a good illustration.

Attorney General KATZENBACH. This is a good example, Senator. We brought a suit there on October 26, 1961. We got a judgment

finally on May 22, 1964. And we got a very good order on that in terms of Negro registration. And it is one of two good orders that we have in the State of Mississippi. And since that order, Negroes who have applied, I think, have been fairly treated. And the result has been that, as I indicated, 854 have been registered, whereas at the last time we filed the lawsuit, I was registered.

The CHAIRMAN. I think that is much better than throwing the Constitution of your country out the window, which is what we are doing if we enact this bill.

Senator JAVITS. Mr. Katzenbach, what are the sources of the figures you are using now?

Attorney General KATZENBACH. Our lawsuits, based on our investigation, plus the census figures.

Senator JAVITS. The investigation of the Department itself?

Attorney General KATZENBACH. Yes. We went through the records, and they are based on our own examination of the records.

Senator JAVITS. May I call to your attention the fact that the U.S. Supreme Court doesn't seem to have as much trouble with figures on Negro voting as you do. I call your attention to the case of the *United States v. Mississippi*, decided March 8, 1965, in which the whole preamble to the case deals with how many Negroes did or did not vote. And the recital of the facts ends up as follows, at page 6 of the pamphlet opinion:

It is apparent that the complaint which the majority of the district courts—

To wit, a complaint that there was discrimination throughout the whole State of Mississippi—

It is apparent that the complaint which the majority of the district courts dismissed charged a longstanding, carefully prepared and faithfully observed plan to bar Negroes from voting in the State of Mississippi, a plan which the registration statistics included in the complaint would seem to show has been remarkably successful.

I call it to your attention, Mr. Katzenbach, in considering whether or not it is justified to say that you couldn't use the figures on this issue of denial to Negroes on voting.

Attorney General KATZENBACH. I am sure you are aware that the Court took those figures from the complaint which the Department of Justice filed in the case.

Senator JAVITS. Great, so much the better.

Attorney General KATZENBACH. And the figures were not contravened. And the issue was one of procedures and parties to the case, and whether or not those people could be joined. So for the purposes of this lawsuit, these figures were accepted by the Court.

Now, that is a somewhat different proposition than testing the figures.

Senator JAVITS. I don't think it is. But perhaps I don't understand you exactly. Understand my point, Mr. Katzenbach? I think that we are striking in this legislation, desirable as it is—and I am all for it—only a part of a target when I think we should hit the whole target as long as we are at it by the same techniques, the same constitutional principles, the same ideas which are incorporated in this bill. Now, this is my difference with you, and I say this most respectfully, because I am all with you on the main point.

Attorney General KATZENBACH. You know if I didn't have those reservations I would be all for the proposition that you suggest, Senator.

Senator JAVITS. Thank you very much.

I just have one or two other questions.

And I again express my deep appreciation to Senator Dirksen and Senator Hruska for indulging me.

I notice that in section 6(b) of the bill you provide that the Civil Service Commission will advise the examiners as to what tests they should apply. Can you give us any idea as to what you have in mind in that, as to what tests the examiners would be asked to apply? You mention, for example, if I understood you correctly with respect to the poll tax that the poll tax—if this voting thing went out for a period of years under the examiner's jurisdiction—that the poll tax would be paid every year. Now, I ask, for example, as a specific illustration of my desire to implement this, does that mean that the poll tax would have to be paid to the examiner before the man went to vote, or does it mean that he would have to pay the poll tax to the State of Mississippi in accordance with its laws after the first time that he paid it to the examiner?

Attorney General KATZENBACH. I think it would mean the latter, Senator.

Senator JAVITS. In that case, wouldn't you have a situation where the time for payment could antedate the time when he paid for the purpose of getting the first vote? And then he would be deprived of the second vote, because he didn't pay in time?

Attorney General KATZENBACH. That may be possible; I don't know. I would have to check to see whether that was possible or not. I doubt if he would have that many elections, but it might be possible.

Senator JAVITS. As a practical matter, however—

Attorney General KATZENBACH. If so, it is something that ought to be cured in the legislation.

Senator JAVITS. As a practical matter, the Civil Service Commission could cure it by its regulations, could it not, because it would be specifying the requirements so far as the examiners were concerned?

Attorney General KATZENBACH. But that would be only for the registration here. I think it might still create a difficulty.

Senator JAVITS. So you think that might have to be dealt with if it proved to be a practical problem?

Attorney General KATZENBACH. It occurs to me that there might be a gap there. I would have to examine the laws to know.

Senator JAVITS. Are there any other qualifications which you felt should be prescribed when you drafted this legislation?

Attorney General KATZENBACH. You take the residence requirements of the State and the age requirements of the State, you would examine whether or not for bad people convicted of a felony that would continue to be the law, and you would take a look at the other qualifications of that kind, and whether they would apply, if possible, in an administrative manner, so that the Civil Service Commission might require the filling out of a simple form which asks those questions and which were answered on it.

Senator JAVITS. I am a little troubled by one thing on the felony point, and that is that some of these States have made it a felony to

demonstrate. And some have made it a felony—for example, you had this sedition indictment in Georgia for people who participated in some kind of a civil rights demonstration.

Attorney General KATZENBACH. Yes.

Senator JAVITS. Do you think we ought to have any provision in the law with respect to the fact that it shall be a felony of a character which represents a crime—a felony according to common law, that it has to do with the established morality of our time, and not just the finding of the State law? That does present a problem, you will agree with that?

Attorney General KATZENBACH. Most of those arrests—I don't think it presents a very substantial problem, because I think most of those arrests have been breach of the peace arrests or parading without a license, or disorderly conduct, and matters of that kind. I don't think a substantial number of voters have been convicted of felonies for demonstrating in civil rights matters.

Senator JAVITS. But is that the kind of matter that would be subject to the regulations of the Civil Service Commission so that it wouldn't be abused?

Attorney General KATZENBACH. Yes; I think they should make sure it wasn't abused.

Senator JAVITS. Now, do you have any provision here—as I understand it, it is proposed to amend this bill to require that the examiner shall be a resident of the State, is that right?

Attorney General KATZENBACH. I have not proposed that, Senator. I spoke to that problem, and I stated what I regarded as the reasons why that was not in here. And I suppose that is something that the committee may want to consider further.

Senator JAVITS. What do you think about it? Have you given your opinion as to what you think about that?

Attorney General KATZENBACH. I think it is extremely desirable that the examiners be residents of the State. I have some reservations about the appointment of an examiner if that would inflict upon him and his family any danger of physical violence or threats or social ostracism, as it could conceivably in a few isolated places. I would have no objection to a provision that required the examiners to be residents of the State. But I would hope that the committee would alleviate that under some circumstances and permit under those circumstances the appointment of somebody else. In general, I think it is desirable that it be a resident of the community who lives there and is just simply more familiar with the local situation. And I think that is generally desirable.

Senator JAVITS. But you would want us to draft a provision which would not frustrate the law?

Attorney General KATZENBACH. Yes, Senator; in any amendment.

Senator JAVITS. If we couldn't find a reputable examiner under those circumstances, you wouldn't want us to be able to find one and be frustrated because we didn't have one with that qualification?

Attorney General KATZENBACH. Absolutely, Senator.

Senator JAVITS. Now, in view of the fact that there has been a good deal of intimidation—let me ask you this question. Has there been a denial of the voting rights on the ground of intimidation as well as

on the ground of literacy tests, has there been denial of voting rights on the grounds of intimidation as well?

Attorney General KATZENBACH. Yes.

Senator JAVITS. Shouldn't there be a part of this bill which endeavors to hit the target as far as possible to firm up our laws on the question of intimidation by the police?

Attorney General KATZENBACH. Yes, Senator.

Senator JAVITS. Now, we have introduced a bill, a number of us, S. 1497, dealing with this question, and dealing, incidentally, specifically with the prohibitions of the *Screws* case. Have you had a chance to go over that?

Attorney General KATZENBACH. Yes.

Senator ERVIN. Do you wish to give us any views on that? I would be moved to seek to add that to this bill.

Attorney General KATZENBACH. Most of the provisions of that, as you recollect, are provisions that I would think we would be—that the administration would support. It goes beyond the problems of voting and the voting of civil rights legislation. My own hesitation on that is that I am not sure that this particular bill is the appropriate vehicle for that. We did broaden the provisions with respect to intimidation on voting in this bill. I think as a separate matter we might well support, at least, in substance, the bill that has been introduced. I am not sure that it ought to be part of this bill.

Senator JAVITS. You say you strengthened the questions of intimidation in this bill?

Attorney General KATZENBACH. Yes.

Senator JAVITS. Could you tell me what part you had in mind?

Attorney General KATZENBACH. It is section 7, Senator.

Senator JAVITS. Now, the penalties there would be the criminal penalties under this act, is that right?

Attorney General KATZENBACH. Yes.

Senator JAVITS. And you had in mind there—

Attorney General KATZENBACH. Essentially we make criminal 1971 (b), which is civil; that is essentially what we do.

Senator JAVITS. But is there any effort there to deal with the *Screws* case, or don't you think the *Screws* case applies?

Attorney General KATZENBACH. We do deal with that here, because we take out the specific requirement of showing purpose.

Senator JAVITS. So that you do deal with it to some extent in the statute?

Attorney General KATZENBACH. Yes. And I think it is a difficult question as to how far you can go in a criminal statute in that respect. I think you can do it pretty clearly with people acting under the color of law, and I think your difficulty begins to come with other people other than those acting under the color of law. I think we have gone about as far on this as we feel we can.

Senator JAVITS. Mr. Attorney General, may I say in closing that naturally I am all with you on the purpose of the bill and our own feelings on what we ought to do. But I do feel that there is a target, and we are zeroing in on it, let's zero in on it in totality. And such differences as we have on that subject are only my deep desire to see that we do that to the fullest. As lawyers we may have differing

views as to whether we are or are not doing it. I don't think we are doing it as well as we could.

May I express my gratitude to my leader for allowing me, the low man on the totem pole, to proceed.

The CHAIRMAN. Senator Ervin.

Senator ERVIN. You had an inadvertence which I am frank to admit I share; however, some remote part of my memory told me to the contrary and I will verify it. The rules of the OPA did not give a judicial review to the court of the District of Columbia; but, on the contrary, they passed a law which is embodied in subsection (c) of section 204 of chapter 26, an emergency court of appeals.

Attorney General KATZENBACH. Yes, sir.

Senator ERVIN. Which had not jurisdiction except in OPA matters.

Attorney General KATZENBACH. Yes.

Senator ERVIN. I had forgotten about that.

Attorney General KATZENBACH. I didn't mean to mislead you on that, Senator.

Senator ERVIN. I know you didn't. I just thought I would get the record clear on that.

Thank you.

The CHAIRMAN. We will recess until 10:30 tomorrow morning. And we will need you back, Mr. Attorney General.

(Whereupon, at 4:55 p.m., the committee adjourned, to reconvene at 10:30 a.m., Thursday, March 25, 1965.)

VOTING RIGHTS

THURSDAY, MARCH 25, 1965

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to recess, at 10:35 a.m., in room 2228, New Senate Office Building, Senator James O. Eastland (chairman) presiding.

Present: Senators Eastland, Johnston, Ervin, Hart, Kennedy of Massachusetts, Burdick, Dirksen, Hruska, Fong, Scott, and Javita.

Also present: Joseph A. Davis, chief clerk, Palmer Lipscomb, Robert B. Young, and Thomas B. Collins, professional staff members of the committee.

The CHAIRMAN. The committee will come to order.

Gentlemen, we have two members leaving town today and they would like to ask some questions. If it is agreeable I would like to let them go first.

Senator Kennedy?

Senator KENNEDY of Massachusetts. Thank you very much, Mr. Chairman.

Mr. Attorney General, I want to express my deepest appreciation for the responsiveness with which you have answered questions asked of you during these past few days. I know they have helped to clarify for me, and, I think, for many members of this committee, a great many of the questions that have been on our minds.

So, I want to commend you for your responsiveness to these questions and the manner with which you have spoken.

STATEMENT OF HON. NICHOLAS deB. KATZENBACH, ATTORNEY GENERAL OF THE UNITED STATES

Attorney General KATZENBACH. Thank you very much.

Senator KENNEDY of Massachusetts. I would like to direct your attention to section 3(a), of the bill. I have a few questions which I think might be helpful in clarifying the record on matters which related to these various provisions of the bill. First of all, in section 3(a), it states that no person shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any—that is the language I am interested in, to comply with any test or device, and so on. That is page 2, line 6.

Does this language mean that when a State falls under this bill, a citizen of that State does not have to take any test or device to register to vote, or does it simply mean that he does not have to pass any test or device in order to register to vote?

Attorney General KATZENBACH. I should think, Senator, it meant he would not have to take any test or device, because it seems to me it would be fruitless to use a test or device and then say it made no difference how he did on it. So I would say the intention there was simply to abolish those tests and devices within those areas.

Senator KENNEDY. Also on 3(a)——

Attorney General KATZENBACH. Suspend those tests and devices within those areas would be a better word.

Senator KENNEDY. On 3(a), the existence of tests or devices in any State or political subdivision of a State is discussed. I know in response to some of the questions that have been asked, you have alluded to the definition of a political subdivision. Just what do you foresee as the definition of a political subdivision?

Attorney General KATZENBACH. Well, the bill is aimed at the registration-for-voting process. Therefore the generic term "political subdivision," in this context would seem to mean that area which, for registration purposes, is selected by State law. That is normally a county or parish in Louisiana under existing law, where the registration process is under the control of an official for this given area. The term, I think, and I think it might be helpful to define the term precisely in that way was intended—we could not say county or parish, because that might not apply in all States now, or in the future, and the effort was to direct it at the area which was under the responsibility of a registrar or board of registrars for registration purposes.

Senator KENNEDY. Now, section 3(b) of the Douglas bill defines it substantially as you have done here. That bill says the term "voting district" means any county, parish, or political subdivision of a State, or any political subdivision of a State which is independent—this is a pretty much what you have suggested here. Do you think that definition would include at least the sentiments which you have expressed here? Or could you expand on that? Or would you feel that the political subdivision could even be of a broader nature than implied in that definition?

Attorney General KATZENBACH. No, I think that is about what we had in mind. Here they are defining the term "voting district," in that bill. I think that I would prefer to relate that definition to the area of registration, at least for purposes of section 3. In general, that is what we had in mind, Senator.

Senator KENNEDY. Touching on an area where there might be some ambiguity, section 3(a) (2) states that the Director of Census is to determine "that less than 50 percentum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 percentum of such persons voted in the presidential election of November 1964." Pertaining to the last clause of that language on page 2, line 13—does the term "such persons," refer to people in the State who were registered to vote, or people in the State of voting age?

Attorney General KATZENBACH. Persons in the State of voting age residing therein, Senator, not those registered. Presumably, normally, people have to be registered to vote. But the reference here would be simply to persons residing therein of voting age.

Senator KENNEDY. Going to section 3(b), to the knowledge of the Department of Justice, are there any States or political subdivisions

of States other than those already mentioned as falling under S. 1564 that do not have a literacy test per se but so have some other test or device which may have resulted in less than 50 percent of the eligible voters being registered or voting in the presidential election of 1964? Attorney General KATZENBACH. No, Senator. There are areas where less than 50 percent voted, but not as a result of the use of a test or device.

Senator KENNEDY. To your knowledge, there was no test or device?

Attorney General KATZENBACH. No. There are other—this has come out in these hearings—there are other techniques that can be used to discourage people from voting, other than a test or device, although a test or device is the principal means that has, in practice, been used. There are other forms of intimidation, for example to discourage voting.

The CHAIRMAN. Could I ask a question there?

Senator KENNEDY. Yes.

The CHAIRMAN. Is it not true that you have a test or device in this bill to keep Texas out?

Attorney General KATZENBACH. No, Senator. That was not—the result of it is that it does not apply to Texas any more than it applies to any State.

The CHAIRMAN. Who on your staff, what staff members worked on this bill? I want the facts about it, to bring it out on the surface.

Attorney General KATZENBACH. Well, a number worked on this bill, Senator. I worked on it personally, myself. I would say the principal people that drafted this bill were myself and Mr. Burke Marshall and the Solicitor General and the Deputy Attorney General, Mr. Ramsey Clark. They were the principal people that worked on the drafting of this bill. Various sections of it were done under our direction, under my direction, by attorneys in the Civil Rights Division, attorneys in the Office of Legal Counsel.

The CHAIRMAN. Now, what about the assistants of the minority leader? Did they have anything to do with it?

Attorney General KATZENBACH. Yes, we had meetings with Senator Dirksen and others, members of their staff. They contributed to the language and ideas of this bill. The same is true of persons on the staff of both the majority and the minority, as well as their counterparts in the other body.

The CHAIRMAN. I want you to name the people.

Attorney General KATZENBACH. Well, the meetings we had here and the Senate side included Senator Dirksen, who was present at some. Senator Hart was present at some. Senator Hruska was present at some.

The CHAIRMAN. I asked you the staff members. That was the question.

Attorney General KATZENBACH. Oh, the staff members. I am sorry, Senator.

The staff members included Mr. Ferris from the Democratic policy committee, included Mr. Neal Kennedy of the minority staff, included others from that staff, included the legislative assistant to Senator Hart.

The CHAIRMAN. I want you to answer this question—

Attorney General KATZENBACH. That is what I recollect.

The CHAIRMAN. Was not one of your big hassles to plan to keep Texas out of this bill? Is that not the reason that you have this test or device in here, to keep Texas out?

Attorney General KATZENBACH. No, Senator. We never proposed a bill, and to the best of my knowledge, no one proposed a bill for that purpose.

The CHAIRMAN. There was no controversy, though, about Texas?

Attorney General KATZENBACH. To my recollection, it was never raised or mentioned, Senator, at any of the meetings that I attended, and I was present at a good many of them. I was not present throughout; I cannot say that that issue did not come up at some other time. But I never recollect any discussion of keeping Texas out.

From the outset, Senator, our concept had been to aim at the tests and devices that had been used, in our judgment, for discrimination. These are the major problems that we have in the Department of Justice, as I have testified repeatedly. That was not adopted with any reference to Texas.

The CHAIRMAN. But, you say you know nothing about a conflict at the staff level to keep Texas out of this bill?

Attorney General KATZENBACH. No, sir. I do not, Senator. No recollection of that. I have never been informed of that.

The CHAIRMAN. Go ahead.

Senator KENNEDY. Mr. Attorney General, directing your attention to section 3(c), the section about the procedures by which a political subdivision can get out from underneath the bill, this section says that any State or political subdivision that has fallen under the test of S. 1564 may file an action in the District of Columbia Court for a declaratory judgment against the United States alleging that neither the petitioner nor any person acting under color of law has engaged during the 10 years preceding in acts or practices denying or abridging the right to vote for reasons of race or color. This State or political subdivision is under the burden of alleging that they have not acted in such a manner—that is page 3, lines 3 through 7.

Is it possible following the presence of Federal examiners, or the ban on tests or devices in any area for 10 years, that such State or political subdivision can come before the District of Columbia and use the presence of such examiners as the basis for an allegation that there has been no discrimination during the past 10 years?

Attorney General KATZENBACH. Yes, it would be, Senator.

Senator KENNEDY. Would it not be necessary for the court of the District of Columbia to make a determination that the State before it would not discriminate in the future?

Attorney General KATZENBACH. I should think not, Senator. I would say if they have not discriminated over the past 10 years, whatever the reason—if the reason was the presence of Federal examiners, that would be sufficient to remove them from the terms of this act.

Senator KENNEDY. Would it not be better in section 3(c), and in conformity with the 15th amendment, and section 2 of the bill, that there be placed on page 3, lines 7 and 11, the language, "on account of race or color"?

Attorney General KATZENBACH. That would parallel, use the language of the 15th amendment exactly. I have no objection to sub-

stituting "on account of color" for "four." I think the intention was the same thing exactly.

Senator KENNEDY. Going to page 4—lines 7 thorough 17—under this section the Civil Service Commission may appoint as many examiners as it deems appropriate. Do you have any idea as to the kind of qualifications the Civil Service Commission will attach to examiners they appoint? Would it be advantageous to indicate the level of competence for such appointee by making appropriate references to a minimum level of Government service rating these individuals should have in order to be appointed?

Attorney General KATZENBACH. That might be a good idea, Senator. It is a matter which I have discussed with the Chairman of the Civil Service Commission. It would be his intention to put the process under a quite senior career official, wherever that was possible to achieve, and then to have him responsible for this process, although he might have to appoint several deputy examiners actually to do the paperwork, but to put it under his supervision. And I think it would be desirable. Also, I might add that the Federal examiner could be an examiner in more than one political subdivision as we have divided it here, and supervise the work done by a number of deputies.

I think that would give the kind of integrity to the process that I think the committee desires. It is difficult to find senior officials, perhaps, in every registration area, but a senior official working out of one city might cover three or four or five or eight counties, and have a number of deputies within that area and supervise their work to make sure that what they were doing was proper.

Senator KENNEDY. Well, would the point—

Attorney General KATZENBACH. Then you want to have for that work, you may need to appoint some temporary employees to do that, depending upon what the burden of the work may be.

Senator KENNEDY. Will these appointees be in the civil service or will they be brought into the civil service, is that point clarified?

Attorney General KATZENBACH. Perhaps it should be clarified. What you have here, Senator, is going to be, I would hope, a rather temporary assignment for people. Now, the Federal employees within those areas are, to the best of my knowledge, doing full-time work at the moment. This would be in addition to their other assignments.

But since it would be of a temporary nature, it would seem to me if it actually required that the Federal examiners be appointed, it would be undesirable to bring a lot of additional people into the Federal service on any kind of permanent basis. So I think you have to face up to that problem.

I would suppose that there might be a period, if a Federal examiner had to be appointed, where a number of people were applying and the office had to be kept open, and it would be a full-time job for a while to get these people registered.

Presumably, once a number of people had gotten registered and were on the books, the job would fall off and be much less. Normally, that is the kind of thing that is done by temporary employees, and I think it would be desirable to have the work of such temporary employees supervised quite closely by a senior civil service official.

Senator JOHNSTON. If you have civil service officials doing this work, are you not violating one of the fundamental principles of civil service?

Attorney General KATZENBACH. I should not think so, Senator; no.

Senator JOHNSTON. Are they supposed to take no part in politics?

Attorney General KATZENBACH. I do not think they are taking part in politics when they simply register people to vote. I think the prohibition on their taking part in politics is in partisan politics.

Senator KENNEDY. The bill allows the appointment of examiners to be terminated by the Commission at any time.

Attorney General KATZENBACH. Yes.

Senator KENNEDY. For failure in performance of their duty. Now, can you see the possibility that somebody might, for failure in the performance of duty, be dismissed under the Civil Service Act, and that under this act, he might lose all his benefits under the Civil Service Act?

Attorney General KATZENBACH. I would think the person presently under the civil service, Senator, would have all of the protections that he presently has under the civil service. I read lines 11 through 14 there as talking about the other problem we talked about, that you can appoint new people without regard to those laws and then terminate those services without regard to those laws. If the person appointed is already a civil service employee, I would suppose he would have all the protections of the existing act.

Senator KENNEDY. In section 4(b), the section simply says that the determination or certification of the Attorney General or of the Director of the Census under section 3 or 4 shall be final and effective upon publication in the Federal Register. Does this language clearly mean that there will be no judicial review or stays allowable once the determination or certification is made?

Attorney General KATZENBACH. There is no judicial review of that, Senator. I do not think it means that when a State or political subdivision comes in under section 3(c), the court could not grant stay. I believe that the court could grant stay there, and I have so testified. But it could not grant a stay on the basis that they are questioning either the Attorney General's judgment or the Director of the Census judgment. The stay would be granted on the basis of their allegation that they have not discriminated in the past 10 years. And I think the court there could grant a stay.

Senator KENNEDY. Under section 5(a), on page 5, lines 3 and 4, this seems to say that a person must be denied the opportunity to register. Must he simply attempt to enter a courthouse or other registration place? Must he stand in line for some period of time?

Attorney General KATZENBACH. I would suppose there that it means that he has been denied either because the registrar will not see him, the registrar has refused to register him, or the office is not open and has not been open, is permanently closed. It would mean something of that kind. I would think there that to say that he has been denied, he would have to have made an effort to go through that process and that effort would include going to the registration office and attempting to register.

One of the reasons for the proviso there, Senator, is that if a person is making efforts to register but the registrar is neither affirming nor

denying this, is taking applications, then doing nothing about it over a long period of time, that would be one of the circumstances under which the allegation could be waived, because the person at that point could not say, "I have been denied." He could say, "I have just tried and tried and I do not know whether I have been denied or not." Given those kinds of circumstances, the Attorney General might waive that allegation and let him be examined by Federal examiners.

Senator KENNEDY. That proviso, therefore, includes the whole section. The applicant must allege either that he has been denied the opportunity to register or that he has been denied the opportunity to vote, or he has been found not qualified to vote by a State authority?

Attorney General KATZENBACH. Yes; it includes everything from "and," in line 1.

Senator KENNEDY. Not just that part, related to the latter allegation, which says, "not qualified to vote"?

Attorney General KATZENBACH. Yes; that was intended to pick up the whole thing, and either that should be clarified in the language or clarified in the committee report so that it indicates it will pick up that whole thing. There is an ambiguity there, Senator.

Senator KENNEDY. In section 5(b), the language of 5(b) on page 5, lines 13 to 17, states that lists of all eligible voters should be available for inspection and transmitted at the end of each month. The proviso in section 5(b), however, states that no person shall be entitled to vote in an election by virtue of this act unless his name has been certified and transmitted, to the offices of the appropriate election officials at least 45 days prior to such election. I can see that this 45-day proviso may result in a situation where the last list that could be submitted would be a list containing the names of federally registered voters as of August 31 for the list to be transmitted at the end of September would not fill the 45-day requirement. Was this intended and if not what kind of language would you suggest to clarify this?

Attorney General KATZENBACH. It was not intended, and I think there is a potential conflict between those. The purpose of saying at the end of each month was to prevent the Federal examiner from getting an impossibly long list of people and making the challenge procedure more difficult to comply with; that is, so that the notion was that names should be transmitted as soon as there was a reasonable number of names so that the challenge procedure could work.

I suppose that if in line 15, the words, "at the end of each month," were changed to "on or before the end of each month," that might meet the problem that you raise of that conflict of the 45-day provision. It is a technical matter, and I agree with you that 45 days and "at the end of each month" do raise a technical difficulty there which I think should be cured.

Senator HRUSKA. Would the Senator yield for a question on that point?

Senator KENNEDY. Yes.

Senator HRUSKA. Referring to the last two lines on page 5, it is indicated that no person shall be entitled to vote in any election unless his name shall have been certified 45 days in advance. I am sure that sentence was not intended to mean that this voting list is the exclusive voting list which would mean all of the voters that would be entitled to vote. Certainly, there would be some who would have registered

under the regular procedure and not under the Federal examiners' procedure.

Would it be in order, Mr. Attorney General to insert language there which would indicate that, so that, for example, we could insert after the word, "vote," words at the bottom of page 5, "that no person shall be entitled to vote," and put new language there, "on the strength of such routine list in any election," unless he has been listed 45 days before. Would that be in order?

Attorney General KATZENBACH. I think so, Senator. It also says in there, "by virtue of this Act," which I think was intended to cover the same point. But it could be made clearer.

Senator HRUSKA. Perhaps that is a sufficient reference. I raised the point here only so that in our executive sessions at a later time, it is clear what the meaning of that sentence is.

Attorney General KATZENBACH. Yes, and I think Senator Kennedy's point is that the end of the month would have the effect of increasing the 45 days. I do not think that was intended, either.

Senator HRUSKA. If some language to clarify that point can be put in in some form, it would be in keeping with the original spirit.

Attorney General KATZENBACH. Yes.

Senator HRUSKA. Thank you, Senator Kennedy.

Senator KENNEDY. Also, on this same point, the transmission of the voter list at the end of each month raises a problem coupled with a provision found in section 6(a) of the bill. Section 6(a) tells us that a challenge to the listing on the Federal list shall be entertained only if made within 10 days after the challenged person is listed. That is on page 7, line 4. But the fact that such a person has been listed would not be known until the end of the month. This would result in a situation where a citizen is registered by an examiner in the first few days of the month, then the fact is not known until the list is submitted at the end of the month, and then challenges are allowed for 10 days into the next month. That is causing the person to be eligible for challenge for 40 days.

Attorney General KATZENBACH. Yes, I think that is possible. The point is that the intention of this was that when the examiner registers somebody, he has to make it public and get it to people so there is an opportunity to challenge.

Now, if the examiner is not making this public and not transmitting the list until a certain period of time, then I think the 10 days should run from the time that somebody has an opportunity to challenge and the insertion "at the end of each month," as I said, was to make sure that the examined did not keep unto himself a long list of names and thus make it difficult to challenge people who were not residents, or to make it easier to have mistakes in the registration process.

So I think while it is true that he remains subject to challenge for a longer period of time, I would suppose that it is drafted here, Senator, so that the challenge period began when the list was made public.

I do not think it was the intention to inhibit the examiner from making such a list; the words, "at the end of each month," were intended to be a minimal requirement as to what he had to do. I do not think there was ever any objection, if he wanted to transmit a list every other day or every week, or whatever intervals he had some names on there. I think it was intended to let him do that and simply

say, "You cannot keep these names unto yourself for more than a month."

Senator KENNEDY. Really, what you are driving at is that the 10 days after the list is made public information, is the period for challenge?

Attorney General KATZENBACH. Yes.

Senator KENNEDY. On section 5(d), the section deals with the procedures by which a person's name may be removed from the eligibility list. On page 6, lines 10 and 11, it tells us that a person's name shall be removed from the list who has not voted at least once during 3 consecutive years while listed. Would you give us an explanation why 3 years were chosen? Why not 4 years, which would include a presidential election?

Attorney General KATZENBACH. Three years is an arbitrary figure. It was taken because, my recollection is, that some States used the 3-year period on this, and therefore, a 3-year period was selected. That would include at least one congressional election in addition to a presidential election. That is the only reason. I do not—there is no magic to the figure 3 other than that. It could be 4, it could be 5, it could be a number of years. But I think 3 was thought to be in accord with a number of State practices in this regard, and therefore, it was selected.

Senator DIRKSEN. The idea was to keep the registration list current.

Attorney General KATZENBACH. Yes.

Senator DIRKSEN. And avoid any other technique that is used in some States, such as those that send out suspect notices when a voter has not voted in three elections. It is just to keep it current.

Now, that is the case in Ohio, and I think in a couple of other States, as I recall.

Attorney General KATZENBACH. I do not think there is any particular magic to the 3-year period other than the general thing which you stated, Senator.

Senator HRUSKA. Would the Senator yield?

Senator KENNEDY. Yes.

Senator HRUSKA. If the State law required that he be dropped from the registration list if he did not vote for 2 years, then you would have two rules prevail in that State, would you not? One is 3 years if he is on the Federal list, the other would have 2 years. It might work in other ways. It might have 4 years, for instance. There again, you would have two classes of citizens, the ones who would have 4 years in which to exercise their right to vote, the other, the Federal list, which says, if you do not vote for 3 years, you are off the list. Would there be any objections to having that period coincide with the State period, if any?

Attorney General KATZENBACH. No, I do not see any reason to object to having that coincide.

Senator JAVITS. You would have to protect yourself by freezing the State periods, would you not? It could again be abused.

Attorney General KATZENBACH. It could.

Senator HRUSKA. I do not see, how it could be abused. Either a man is dropped or he is not.

Attorney General KATZENBACH. I would suppose if a State were to make it a ridiculously short period of time, 30 days or something of

that kind, that could be controlled by section 8 of the bill, which says you cannot amend those provisions if your law is so designed as to deny or abridge rights. So with that understanding, and subject to section 8 remaining the way it is, I would have no objection to making the period of time coincide with State law.

Senator KENNEDY. Section 5(d) states that a person's name might be removed from the list if he has otherwise lost his eligibility to vote. Could you explain some situations where a person could have otherwise lost his eligibility to vote?

Attorney General KATZENBACH. The obvious one is death, Senator, and another is moving out of the electoral district.

Senator KENNEDY. But it is really limited to a circumstance of that type?

Attorney General KATZENBACH. Conviction of a felony, going insane—those are the only things I can think of offhand, yes.

Senator KENNEDY. So it would only be permissible under the kinds of examples you illustrate?

Attorney General KATZENBACH. Or would have barred him in the first place.

Senator KENNEDY. Those ineligibilities that would have barred him in the first place, would be used under this to strike him from the list?

Attorney General KATZENBACH. That is right, Senator.

Senator KENNEDY. In section 7, which tells us that no one shall refuse a person whose name is on the Federal list to vote, is there any possibility under the language of this section, page 8, lines 1 through 4, of those who would be selected as examiners, what right they would have under civil service? And what would be the obligations of the Civil Service Commission to them after their temporary duty under this act?

Attorney General KATZENBACH. No, he has gotten registered already under the assumption of section 7. So I would think the intimidation, threatening, or coercing would apply to any period of time after that registration up through the time when he could have voted.

The CHAIRMAN. Could I ask a question here?

Senator KENNEDY. Yes.

The CHAIRMAN. What is the law now?

Attorney General KATZENBACH. The law on that subject now, without reference to putting it on the registration list, is very similar, perhaps is word for word with this provision, Senator.

In addition, Senator, the intimidation provision, at least the subsequent—the word “vote” is defined on page 11 here, and includes attempting to register.

The CHAIRMAN. Did I understand it correctly, and I ask for information, that if a person is arrested, he is intimidated? That happens all over this country. This bill, the present criminal sanctions in this bill are the same as expressed in the present law.

Attorney General KATZENBACH. Yes, there are criminal sanctions under the existing law. The criminal sanctions which exist here under section 9(c) are heavier criminal sanctions than exist under the present law, Mr. Chairman.

The CHAIRMAN. Yes, but that would just apply to this certain number of States. What you are doing is placing heavier criminal sanctions on five or six States when people all over the country are intimidated, and ballot boxes are stuffed, is that not correct?

Attorney General KATZENBACH. That is only for—section 9(c) does only apply to the States or subdivisions that are under this act, Mr. Chairman.

The CHAIRMAN. What you are doing, you are placing—let us take the Daley machine. They stuffed some ballot boxes and stole some votes in Chicago. Now, the criminal sanctions under this bill are heavier and would apply to only these few States than would apply in the State of Illinois, is that correct?

Attorney General KATZENBACH. In that instance, the existing provisions of section 241 of the law, if two or more people conspire to do this, Senator, would have identical criminal provisions to what are provided in this act.

The CHAIRMAN. But that is a misdemeanor, is it not?

Attorney General KATZENBACH. No, sir, 241 is a felony; 242 is a misdemeanor. The provisions under 241 are at least as severe as the provisions provided in this act. I have forgotten whether it is 5 or 10 years. It is a felony.

The CHAIRMAN. But the point is that you are placing a heavier penalty, heavier criminal sanction, against people of five States than you are for the same crime committed in other areas of the country. That will take a very simple answer, "Yes" or "No." Is that statement true or is it not true?

Attorney General KATZENBACH. The penalties would be the same or as severe in every State for a conspiracy to intimidate people from voting.

The CHAIRMAN. For a conspiracy, I understand that.

Attorney General KATZENBACH. Yes, and the provisions here in section 5(c) are also a conspiracy. My recollection is that 241 does require the under color of the law provision, does it not—no, it does not. Then the provisions would be no more severe for violation of this act than there would be for intimidation of voting generally, under the present law. I believe that is correct, Mr. Chairman.

Senator ERVIN. I would like to ask some questions while we are on this point.

I shall ask the Attorney General a question regarding section 9(a) of this bill if an election official in 1 of the 34 North Carolina counties or in 1 of the 6 States affected undertook to administer a literacy test, he could be sent to prison for 5 years and fined \$5,000, whereas if a registrar in the State of New York administered a literacy test, nothing whatever would be done with him?

Attorney General KATZENBACH. That is correct, sir.

Senator KENNEDY. Mr. Chairman. I have just two or three remaining questions. I would be delighted to yield to Senator Dirksen.

Senator DIRKSEN. If I could have the attention of the Senator from North Carolina, that observation is not correct, because you have to go back to the all-inclusive section in this bill, which is section 2. It says that no voting qualification or procedure shall be imposed or applied to deny or abridge the right to vote on account of race or color. That is a restatement, in effect, of the 15th amendment.

Attorney General KATZENBACH. Yes.

Senator DIRKSEN. And it applies to all of the 50 States of the Union, where the right to vote is abridged or denied.

Attorney General KATZENBACH. Yes.

Senator DIRKSEN. And the penalty referred to here in section 9(a) says here that conspires to violate the provisions of subsection (a) or (b) of this section or interferes with the right to vote secured by section 2 or 3 or who shall violate section 7, and so on. So it applies to all of the 50 States.

Senator ERVIN. Section 3 outlaws a literacy test. This provides that if a person undertakes to deprive anyone of any right pursuant to section 3, which would be the right to be exempt from a literacy test, notwithstanding the interpretation placed on it by my good friend from Illinois, he can be sent to prison for 5 years and fined \$5,000 in 34 North Carolina counties, but there cannot be anything done with him for doing the same thing in New York City.

Senator DIRKSEN. I am sorry to differ, but I do.

Attorney General KATZENBACH. Because it is prohibited in these counties in North Carolina if they have been discriminating, and it is not prohibited in areas where they have not been discriminating. But if it is used as a basis for discrimination anywhere, which is the point Senator Dirksen was making, the same penalty applies.

Senator ERVIN. I will say that any law that makes a thing crime in one area of the Nation and not a crime in another is unjustified and reprehensible.

Senator DIRKSEN. Well, the State may have a test or device, as we define it, and it can even vote more than 50 percent of the voters or have more than 50 percent registered under the civic laws, but I respectfully call attention to section 2, which we wrote into the draft, that I prepared with staff at least a week or more before we even began conferences, and we had section 2 there which is the foundation for my bill, namely, the 15th amendment. That is applicable anywhere at any time, regardless of what the Census Director may find, or what you may determine. That is the broad foundation to this bill.

Attorney General KATZENBACH. That is correct, Senator.

Senator KENNEDY. Mr. Attorney General, in section 8, it says that a State may not enact any law or ordinance imposing qualifications or procedures for voting different than those in force and effect on November 1, 1964, and that such law or ordinance shall not be enforced unless and until it shall have been finally adjudicated by an action for declaratory judgment before the District Court for the District of Columbia. Could you indicate why the date of November 1, 1964, was chosen? Was this an arbitrary date and have such State laws or ordinances grown in their discriminatory nature since the passage of the Civil Rights Act of 1957?

Attorney General KATZENBACH. The date selected was the same date selected for the triggering provision of section 3. The reason for it, Senator, would be that absent a provision of this kind, you leave it open to a State to devise, if it can, some new method of preventing people from voting on grounds of race, and then go through the painfully long litigation process. This has been our experience in the past. As we have won law suits in three States, three States decided to change the qualifications for voting, and we had to litigate the new qualifications for voting. This is an attempt to prevent new laws which would frustrate the objectives of Congress here. We had the same experience with respect to the schools in Louisiana, where every time the judge issued an order, the legislature, which was in session,

passed a law which would frustrate the order. They abolished school boards, they cut off the funds from school boards; they made it impossible to fulfill the courts' order.

The CHAIRMAN. Mr. Attorney General, I understand that you have an urgent telephone call to make.

Attorney General KATZENBACH. I do, Mr. Chairman; yes.

The CHAIRMAN. We shall recess for a moment.

Attorney General KATZENBACH. May I just take 3 or 4 minutes?

The CHAIRMAN. Yes.

Attorney General KATZENBACH. Thank you, Mr. Chairman.
(Short recess.)

The CHAIRMAN. Come to order. Proceed.

Senator KENNEDY. Mr. Attorney General, there have been some additional questions that have been raised about the kind of benefits that would be available under the Civil Service Act to any individuals that would be appointed under this legislation. Could you review for the benefit of the record what you conceive to be the rights and benefits of those who would be selected as examiners, what rights they would have under civil service? And what would be the obligations of the Civil Service Commission to them after their temporary duty under this act?

Attorney General KATZENBACH. I should think very little as far as the existing law is concerned. If they are appointed without regard to those laws, then I would think that they would not get the retirement benefits and so forth that are given to people put permanently on the list. But I would suppose that they would be entitled to the same sort of benefits as Government officials, Government employees ordinarily are when they are appointed under a temporary appointment.

Senator KENNEDY. But with regard to the benefits under civil service, these are temporary appointees that would not normally be entitled to the full benefits of civil service that the permanent employees would be?

Attorney General KATZENBACH. Yes; that would be my belief, Senator. Frankly, I have not gone into that in detail, and I think Mr. Macy could provide probably more detail on that from his greater familiarity with the benefits than I have.

Senator KENNEDY. Would it be appropriate, Mr. Chairman, to ask Mr. Macy, the Chairman of the Civil Service Commission to respond to this at some time so we will have the benefit of his evaluation?

The CHAIRMAN. Yes.

Senator JOHNSTON. May I ask a question on this?

Senator KENNEDY. Yes.

Senator JOHNSTON. Will these be registrars, and how much will they work?

Attorney General KATZENBACH. I would say that is very difficult to predict, Senator. In some areas there may, if an examiner were appointed, there might be a great many people who would apply to him and he might have to work several days a week for a fairly long period of hours. I would suppose that if it were not possible for existing Federal Government employees, civil service employees to perform this function, it would be necessary to hire new people, they would be hired and paid on a when actually employed basis.

Senator JOHNSTON. How would you get at and how much insurance would a man be entitled to, when on the yearly basis they are entitled to the next highest \$1,000? How would you get at that when you figure out the insurance? You would not know how much he is going to work, how much he is going to get. Just how much would the fringe benefits be?

My committee has to do with that kind of thing, and I can see the complication that is going to come up.

Attorney General KATZENBACH. I would suppose it would be on the same basis as people who are employed temporarily without regard to civil service laws now for other purposes.

Senator JOHNSTON. But under civil service, we have them employed. They are certainly employed by the month or longer generally, before they get those benefits.

Attorney General KATZENBACH. Yes.

Senator JOHNSTON. But how do you know how long these people are going to be employed? That is what I am getting at.

The same thing is true of the insurance, life and hospitalization. You have a problem there of whether or not they are going to get paid and whether the Government is going to pay half of the insurance and the employee is going to pay his share in a particular case. You just do not know how much it is going to cost. Those things ought to be explored. We ought to know where we are going in this matter. If we do not, we shall open up other people in all fields wanting the same treatment that you are giving in this case.

Attorney General KATZENBACH. Yes.

Senator DIRKSEN. Could I make a suggestion?

Senator JOHNSTON. Yes.

Senator DIRKSEN. Mr. Attorney General, I think in the interest of clarification, it might be well for you to prepare a written memorandum for inclusion in the record at this point, covering the items raised by the distinguished chairman of the Civil Service Committee.

Attorney General KATZENBACH. I shall be happy to do so, Senator.

Senator DIRKSEN. And by the Senator from Massachusetts.

(The memorandum referred to follows:)

CIVIL SERVICE LAWS THAT WILL APPLY TO EXAMINERS APPOINTED UNDER SECTION 4 (A) OF THE VOTING RIGHTS ACT OF 1965

The bill provides that examiners shall be appointed "without regard to the civil service laws and the Classification Act of 1949, as amended, and may be terminated by the Commission at any time." The effect of this provision is as follows:

APPOINTMENT

The words "without regard to the civil service laws" have the effect of putting the positions in the excepted service. This means that the requirement of open competitive examinations and other requirements of the Civil Service Act will not be applicable.

COMPENSATION

The language that "appointments shall be made without regard to * * * the Classification Act" is apparently intended to authorize the fixing of compensation without regard to the Classification Act. (The Classification Act is not an appointing authority; it is a compensation-fixing authority.)

SEPARATION

The words "may be terminated by the Commission at any time" do not have the effect of excluding employees from the coverage of the Veterans' Preference

Act. These words indicate when the Commission may terminate: the Veterans' Preference Act specifies how. However, the act would not be operative until the employee had served a year. The Lloyd-LaFollette Act would not apply, since it covers only positions in the competitive service.

OTHER PERSONAL LAWS

All the other personnel laws apply, except that coverage may be denied on the basis of regulations of the Commission that exclude certain temporary types of appointment. For example, if the appointment is for a period not to exceed 1 year, and the employee holds no other Federal appointment, he will be excluded from coverage under the Civil Service Retirement Act, the Federal Employee's Group Life Insurance Act, and the Federal Employees' Health Benefits Act. He will be subject to FICA taxes for social security. He will be eligible for compensation benefits for job-related injury or illness. If he has a regular tour of duty, he will earn annual leave (available after serving a regular tour of duty for 90 days), and he will earn sick leave. He will be eligible for pay for holidays which fall on days he is scheduled to work.

The above is in reference to appointees from outside the Federal service. Since the Dual Compensation Act is not made inapplicable, a person holding a Federal position may not be "appointed" to one of these positions. Instead the Commission will have to arrange to "borrow" these employees by detail from the employing agency. A detailed employee remains on the rolls of the employing agency and retains coverage of all the personnel laws that apply to him as an employee of that agency.

It should be noted that the section deals only with examiners and not with any clerical or other support personnel that might be needed. Unless it is possible to construe "examiners" broadly as including any personnel concerned with the registration of voters, the support personnel would have to be appointed in accordance with the Civil Service Act and compensated in accordance with the Classification Act of 1949, as amended. Their status with respect to the other statutes would be the same as that of examiners, except that the Lloyd-LaFollette Act will apply if they complete a 1-year probationary period.

Attorney General KATZENBACH. I think you have to remember on this that it would be the desire of the administration that no examiners be appointed and that the State registrars simply perform their functions under this act. Federal examiners are only going to be appointed wherever that failed to occur. I confess that it is extremely difficult to make an accurate projection of how many State officials will not do what this act requires them to do and thus require the appointment of Federal examiners. It is hard to get a very hard figure when you are predicting human conduct of a number of people whom you do not know and do not know who they are and what they will do. But I do think it is possible to answer a number of the questions that you raised, Senator Johnston.

The CHAIRMAN. That will be fine.

Senator Kennedy?

Senator KENNEDY. I have just a very few questions remaining.

Mr. Attorney General, when you were answering the earlier question with regard to section 8 and why the November 7, 1964, was selected, you mentioned in your answer that from the time of the Supreme Court decision of 1954 and the 1957 Civil Rights Act there had been changes by various States in their laws which you would interpret in some instances as making it more difficult in the fields of education and voting. I am wondering whether, even for the point of consistency, 1964 is the best time, the best date to have selected, when you recognize the background and changes made in some States. Would you feel that an earlier date would be more desirable?

Attorney General KATZENBACH. I think November 1964 is a satisfactory date. We have one of those cases already decided. The other two cases will be decided promptly by the Supreme Court. Since both of those deal with qualifications which are otherwise abolished by this act, I see no reason not to take November 1, 1964, as the date.

Senator KENNEDY. In section 9(e), the language of 9(e) gives two levels of discretion through which a complaint must pass before an injunction may be issued. First, the examiner must decide that the person has not been allowed to vote, and then the U.S. attorney may decide whether the person has not been allowed to vote. My question is, Why is it necessary for an examiner, a citizen appointed by the Civil Service Commission, to have discretion over whether or not he would notify the U.S. attorney of the complaint of a person not allowed to vote? It seems to me we are providing discretion whether this action should be taken by both the examiners appointed by the Civil Service Commission as well as the U.S. attorney. Would it strengthen the bill to provide that the only discretion would be the discretion of the U.S. attorney?

Attorney General KATZENBACH. Somebody has to determine whether or not the allegation is well founded, and it would seem to me the person best equipped to do that would be one of the Federal examiners, who is familiar with the list and familiar with the people on the list, and also because there are conceivably more of them. You have one U.S. attorney covering the whole Federal judicial district. I do not know whether he could be in a position to determine that as easily as the examiner.

Senator KENNEDY. It is now an either/or situation, where the examiner or the U.S. attorney could do it. Could you change it so that only if the U.S. attorney felt there was sufficient ground for a complaint, he would initiate such action?

Attorney General KATZENBACH. Yes, that could be done. I think it is a more orderly procedure, Senator, if the people know they are going to go to the examiner and complain to him. He is the same person who registered them. They have made no contact with the U.S. attorney before and they have had contact with the examiner. Presumably, it has been a good contact, since the examiner registered them.

It seems to me they would know him and he would be the person most easy to go to in this respect.

Senator KENNEDY. Nowhere in the bill is there any language providing protection against intimidation or threats to persons seeking office. Did the Attorney General or the Justice Department consider this possibility in view of the existing legislation.

Attorney General KATZENBACH. No, there is nothing in the bill which applies to persons seeking office or intimidation there. I do not think there is anything in the existing law which covers that.

This might well cover the situation. As a practical matter, a person seeking office seeks to go out and get people to vote for him. I suppose his intimidations against doing that might easily result in intimidation of those who were seeking votes for him and their votes themselves. So we might, as a practical matter, easily get it in, but there is no provision which protects an officeseeker. If the committee feels that should be included, I would not object to it.

Senator KENNEDY. And finally, Mr. Attorney General, have ways been considered to bring the provisions of this measure into certain political subdivisions which may exist in States that do not have such tests? This question has been raised by a number of my colleagues on this committee. Most specifically, would it not be possible for the Congress to find that in any political subdivision with less than 25 percent of the eligible Negroes registered, there is an indication or presumption of the violation of rights guaranteed under the 15th amendment? Could not the Attorney General receive petitions from a determination for that political subdivision and that political subdivision only?

Attorney General KATZENBACH. I think that would be possible, Senator. There is a time lag and quite an expense to taking a census, even of a political subdivision. In some areas, the figures which I discussed yesterday with Senator Javits may be accurate, or if not accurate, at least they are the figures that the State itself provides. I suppose it would be possible to use those in a procedure of this kind if they came from the State itself. That would not completely meet the point, because not all States have those figures, and not all places where there is possible discrimination could provide those figures. Those figures are available in some areas.

They are available, for example, presently in northern Florida and they are available, I believe, in Arkansas. I do not believe they are available elsewhere.

Senator JAVITS. Would the Senator yield?

Senator KENNEDY. I believe Civil Rights Commission figures are available in Arkansas and in Florida. The Tennessee and Texas figures have not been broken down by color.

Attorney General KATZENBACH. That is right. So you would not touch Tennessee or Texas. You could—I think it would be fair enough—if that is what the committee decided, to stick a State with their own figures in this respect. I think that would meet the point that I was concerned about yesterday with Senator Javits.

But I think if the State has not gotten the figures, you would have to go out and get the figures, and that is a fairly expensive proposition.

Senator KENNEDY. I was wondering whether the Attorney General could ask the Director of the Census for these figures, whether this could be a procedure which you, as the Attorney General, feel would be helpful and would be warranted, rather than either relying on figures that have been disputed within the State or which could be questioned coming from the Civil Rights Commission? Could we not set up a procedure in which the Director of the Census could be charged with that responsibility and these figures, when available, if, after the enumeration is made, show that less than 25 percent of the Negroes are registered—could not at that time the examiner procedures in the bill be put in effect for the political subdivision?

Attorney General KATZENBACH. I think they could at that time, Senator. I am not convinced that that would be more expeditious than simply bringing the State under the existing law, which may actually involve a lesser burden than a complete census within the area.

Senator JAVITS. Would the Senator yield on that particular point, because Mr. Katzenbach referred to me?

Senator KENNEDY. Yes.

Senator JAVITS. I have checked back, Mr. Attorney General, and I find that in the administration bill of 1963, the Department itself set a trigger that appears on page 5, line 18, of the bill, of 15 percent of the total number of voting age persons of the same race, and so on.

Attorney General KATZENBACH. Yes.

Senator JAVITS. I just wondered where, at that time you expected to get the figures. This was your own bill.

Attorney General KATZENBACH. That is right, Senator. The triggering device there also involved the full trial of the issue of practice or pattern, and created merely a presumption.

Senator JAVITS. That is all it creates here.

Attorney General KATZENBACH. We felt there were places—perhaps I misunderstood you yesterday. We felt there were places where the figures provided by the State itself could be used to establish that 15 percent. At that time, we recognized that there also would be areas where we would not have those figures, and therefore be unable to use that 15-percent figure. It had that defect.

I think in the areas where the registration figures are broken down by race and provided by the State itself, it is fair enough to use that as a triggering device for further proceedings under the 1964 act. That was suggested before by the administration. It ran into—the difficulties it ran into, Senator, with some Members in the other body—I do not think it was ever fully considered by the Senate—it ran into this difficulty, that some Members said that if the political subdivision has not in fact been discriminating, yet you register on a temporary basis all of these people, then fail to win your lawsuit, then for an election or more, people, when there was no violation of the 15th amendment, nonetheless would have been permitted to vote. That was not my position. I did not feel that that created the problems that some Members of the other body thought it could create. But that was the major argument that was used against it.

Senator JAVITS. Senator Kennedy is pursuing an excellent line of questioning, and if I may, to help us both, could I just sum up what I understand is now your testimony?

One, if the burden of proof shifts away from the contestant to the Federal Government, then there is no objection to this triggering device; that is constitutional. You told me that yesterday.

Two, if the State has figures, then again, it could be a triggering device.

And, three, if, as Senator Kennedy has pointed out, the Census Bureau comes through under title 8, then it could again be a triggering device. So we have three ways in which it could be a triggering device, consistently with the testimony of the Department. Is that correct?

Attorney General KATZENBACH. If I understood your first one correctly, if the Government has the burden of proving the figures—

Senator JAVITS. Right.

Attorney General KATZENBACH. That is really like the third one. The Government could prove the burden by a special census or something of that kind, or the State itself could provide the figures; then I think it could be used as a triggering device; yes, Senator.

Senator JAVITS. I thank my colleague very much.

Senator HART. Perhaps, Senator Javits, when he used the expression, "title 8," was referring to a thing I want a clarification on.

Your concern yesterday and again today was the tentativeness of the Civil Rights Commission's figures. Your reluctance sprang from the absence of a solid set of figures. You are solid on the 50 percent because you get that by census?

Attorney General KATZENBACH. Yes.

Senator HART. What in the 1964 act was the Census Bureau directed to compile? Was it not a set of figures which, when developed, will give you the same solid case that you now feel you have with respect to the overall census?

Attorney General KATZENBACH. Yes; in areas selected by the Civil Rights Commission, if I remember correctly, yes.

Senator HART. The Civil Rights Commission, under the 1964 act, is authorized to request a census?

Attorney General KATZENBACH. Yes. The difficulties with that, Senator, quite frankly, have been tremendous factors of cost in making such a census, in addition to which it takes quite a bit of time. This is why I raised the question. Maybe we can do it quicker with a lawsuit than taking a census.

Senator KENNEDY. I have completely finished. I would like just, if I could, to read that, under Section 8: Registration and Voting Statistics, section 801:

The Secretary of Commerce shall promptly conduct a survey to compile registration and voting statistics in such geographic areas as may be recommended by the Commission on Civil Rights. Such a survey and compilation shall, to the extent recommended by the Commission on Civil Rights, only include a count of persons of voting age by race, color, and national origin, and determination of the extent of which such persons are registered to vote, and have voted in any statewide primary or general election in which the Members of the U.S. House of Representatives are nominated or elected, since January 1, 1960.

And then the rest of the act follows.

I want to express my appreciation to the Chair and to you Mr. Attorney General, and to my colleague, Senator Hruska. I realize that he has to go also.

Attorney General KATZENBACH. Thank you very much, Senator.

Senator HRUSKA. Mr. Attorney General, a little bit ago, you referred to some preliminary conferences which were held before the bill reached its final draft.

Attorney General KATZENBACH. Yes.

Senator HRUSKA. I want to say that this Senator had been invited to participate in some of those conferences and accepted those invitations. I participated in some of them. If my presence or if any suggestion I made had any effect on some of the changes that were brought about in favor of a better and a more acceptable bill, I am gratified at it. I did not cosponsor the bill, because I did and I do now take exception to some of the provisions which were retained in the bill. I felt if I had not cosponsored the bill, I would be in a more free position in the executive sessions that will undoubtedly be held by this committee to urge further changes besides those that were made; and in fact, probably to include some additional provisions which would reach conditions and situations which are not covered now by the bill.

I thought in fairness to the witness, Mr. Chairman, I should verify his testimony to the effect that this Senator was present at some of those meetings.

Mr. Attorney General, one of my colleagues is a little apprehensive about some of the heavy penalties that are affected under sections 9(a) and 9(c) and other sections. He asked me to find out whether or not an employer who would be busy on a particular day or who would be caught in a particularly busy season would be confronted with the requests of some employees to take time off to register with Federal examiner. Would he be considered guilty with interfering with any secured by sections II, III, and VII, and therefore subjected to the possibility of a fine of \$5,000 and imprisonment for not more than 5 years?

Attorney General KATZENBACH. No, Senator, I should think not. I would be quite clear that he would not.

On the other hand, I should think an employer who said, "any employee of mine who attempts to register to vote is going to be fired," might be subject to these provisions.

Senator HRUSKA. Or the circumstances of the business are such that he has a valid reason to explain why he did not allow these people time off at the particular time of their request—you would not consider that would subject him to these penal provisions?

Attorney General KATZENBACH. No, I am confident that they would not, Senator.

Senator SCOTT. Would the Senator yield on that?

Senator HRUSKA. Yes.

Senator SCOTT. Does your answer, Mr. Attorney General, imply that if some one requests time off to register, you would meet this through the regulatory provisions by arranging for the examiner to be available prior to or subsequent to the working hours of the day for that industry?

Attorney General KATZENBACH. Yes, Senator.

Senator SCOTT. Thank you, Senator.

Senator HRUSKA. Mr. Attorney General, there are two sections, subsections in the bill which deal with the listing of voters. I refer to section 5(b) which reads:

Any person whom the examiner finds to have the qualifications prescribed by State law in accordance with instructions received under section 6(b) shall promptly be placed on a list of eligible voters.

I read now from section 6(b), leaving out nonpertinent words:

The * * * procedures for * * * listing pursuant to this Act and removals from the eligibility list shall be prescribed by regulations promulgated by the Civil Service Commission and the Commission shall, after consultation with the Attorney General, instruct examiners concerning the qualifications required for listing.

Attorney General KATZENBACH. Yes.

Senator HRUSKA. In one section we have a reference to "qualifications prescribed by State law."

Attorney General KATZENBACH. Yes.

Senator HRUSKA. In the other, there is no such inclusion of those words. Is that an inconsistency, or is that an inadvertence, or what particular meaning does that difference in language have?

Attorney General KATZENBACH. On line 22 of 6(b), there is a reference to qualifications, Senator, which is intended to track with 5(b).

Senator HRUSKA. But that does not refer to qualifications prescribed by State law. That presumably refers to the regulations and the qualifications set up and published by the Civil Service Commission.

Attorney General KATZENBACH. The intention would be here that that the qualifications prescribed by State law not suspended by this act would be determined by the Attorney General, who would then pass those on to the Civil Service Commission, which would, in its regulations with respect to each State and voting district within that State, inform the Federal examiners of what those qualifications are. So the qualifications here and in line 22 would be the qualifications prescribed by State law, except as suspended by the provisions of this act.

Senator HRUSKA. Of course, it does not say that in either section, does it? Under the language of either of those subsections; the Attorney General is not directed to follow the qualifications prescribed by State law, except for those that are mentioned in section 8. He may go beyond that, may he not?

Attorney General KATZENBACH. I would have thought not, Senator.

Senator HRUSKA. Would you have any objections to amendment so that can be done?

Attorney General KATZENBACH. Clarifying that? No, Senator.

Senator HRUSKA. Would that mean, Mr. Attorney General, that in the formulation of these qualifications, the State law would be applied except for those objectionable tests and devices which are defined in section 3?

Attorney General KATZENBACH. Yes, Senator; or those which are being contested under section 8.

Senator HRUSKA. Or those that would what?

Attorney General KATZENBACH. Be contested under section 8.

Senator HRUSKA. Of course, those, if they were qualified by approval of the District Court of the District of Columbia—

Attorney General KATZENBACH. Then they would be included.

Senator HRUSKA. Then they would be included?

Attorney General KATZENBACH. Yes, Senator.

Senator HRUSKA. So under your construction of the language as we now have it, the Attorney General would be circumscribed and somewhat limited in his issuance of regulations as to qualifications of voters?

Attorney General KATZENBACH. Yes, Senator.

Senator HRUSKA. And if it is considered by the committee that this language is a little loose to accomplish that interpretation, would there be objection to amendment accordingly?

Attorney General KATZENBACH. No, Senator. I would be happy to assist the committee if they would wish any assistance on that.

Senator HRUSKA. On page 13 of the mimeographed statement which you submitted and read to the committee a couple of days ago, there is a very imposing list of authorities, decisions of the Supreme Court, and I should like to ask you, Mr. Attorney General does any one of these decisions or opinions referred to deal with the statute which confers the right of suffrage on any one, under federally prescribed qualifications of voters?

Attorney General KATZENBACH. No, Senator. I do not think it has ever been done before.

Senator HRUSKA. As a matter of fact, some of the decisions specifically say, do they not, that for example, in *United States v. Reese* case and *James v. Bowman*, both of these cases state that the 15th amendment does not confer the right of suffrage on any one, as I read the cases. Do you recall that particular part of it?

Attorney General KATZENBACH. That is correct, Senator, yes.

Senator HRUSKA. So that to the extent that this act might confer upon the Federal Government the right to determine voter qualifications, it cannot be said that any of the decisions cited in your statement, either on page 13 or on page 15, deals with a situation which is comparable to and which embraces that particular phase of the proposed bill?

Attorney General KATZENBACH. That is correct, Senator. Except that I would take exception to your characterization that this bill that is before the committee now in any way sets Federal qualifications for voting. It does not. State qualifications remain except for those state qualifications that have been used in violation of the 15th amendment, and they are suspended.

For example, the President was terribly interested in 18-year-olds voting, and he asked me back in November, can we set a Federal qualification for 18-year-olds to vote by statute? I had to tell him that we could not do that, that that required a constitutional amendment. He was also extremely interested in the elimination of the poll tax in its entirety and wanted to do this. He has, you know, repeatedly taken that position publicly. He asked me whether, in his prior days in Congress, he had been wrong in thinking that this could not be done by statute. I gave him the same advice that I have given the committee here. I think if Federal qualifications, as such, are to be set, then it requires a constitutional amendment to do so.

But at the same time, State qualifications that have been used in violation of the 15th amendment, been used for discriminatory purposes, can, in my judgment, as I have repeatedly testified here, be suspended. I think that is consistent with the decision cited in my statements.

Again, I would read—I think it is already in the record, but the statement of the Court in the 1959 decision which upheld the North Carolina literacy test but upheld it with this caveat:

So that while the right of suffrage is established and guaranteed by the Constitution, it is subject to the imposition of State standards which are not discriminating and which do not contravene any restriction that Congress, acting pursuant to its constitutional powers, has employed.

Senator HRUSKA. What case was that?

Attorney General KATZENBACH. That is, *Lassiter v. Northampton Election Board*. The case upheld the literacy test in North Carolina, but the Court, I think, speaking to Mr. Justice Frankler, was—Mr. Justice Douglas, it was—at 360 U.S. at page 51, pointed out that the imposition of State standards not discriminatory, not contravening any restriction of Congress acting pursuant to its constitutional powers, is imposed.

Senator ERVIN. I want to ask Senator Hruska to yield.

Senator HRUSKA. I shall be happy to yield.

Senator ERVIN. The Court held in that case that the North Carolina literacy test, which is embodied in the North Carolina Constitution and which merely requires as a condition precedent to registration that a voter show that he can read and write a section of the State constitution in the English language, was perfectly valid and was within the constitutional power of the State of North Carolina.

Attorney General KATZENBACH. Absolutely, Senator. If you would agree with me that there is no evidence introduced in that case, no part of the record in that case that showed at that time that that test had been used in violation of the 15th amendment. Would you not agree with that?

Senator ERVIN. And yet this bill would nullify or suspend that provision of North Carolina law unless North Carolina could come up and show there had been not a single person discriminated against on the ground of race within 10 years before they bring the suit in the courts of the District of Columbia.

Attorney General KATZENBACH. Yes.

Senator HRUSKA. And there is on that case, of course, that some differences exist. And there are other places in America where there is heavy discrimination which is not treated with in this bill and which, in the opinion of some, cannot be adequately treated under existing law. It is to that I referred to in my opening statement that perhaps it might be well to explore some additional sections so that we can reach these things and reach them effectively at a time when there is a demand for electoral reform.

Attorney General KATZENBACH. I have indicated repeatedly, Senator, I am entirely sympathetic with doing so if we can find a constitutional means and a practical means of doing so. I confess that my ingenuity has floored in that regard.

Senator HRUSKA. Let me repeat what I understand the Attorney General to say in reference to voting qualifications. It is your construction, Mr. Katzenbach, that this act does not pretend to vest in the Federal Government or any of its agencies either the right or the opportunity to prescribe voting qualifications. Can that statement stand in that fashion?

Attorney General KATZENBACH. Yes, Senator.

Senator HRUSKA. And the provisions in section 6(a) and 6(b) with reference to instructions and regulations promulgated by the Civil Service Commission after consultation with the Attorney General, cannot be construed to be a basis for the Federal Government prescribing voting qualifications?

Attorney General KATZENBACH. Correct, Senator.

Senator HRUSKA. That is all the questions I have at this time.

I note the clock, Mr. Chairman. I am grateful to you for allowing me to proceed to the conclusion of this part of my examination.

Senator JOHNSTON (presiding). I believe you will be back this afternoon; is that correct?

Attorney General KATZENBACH. If my presence here is desired, Mr. Senator.

Senator JOHNSTON. We have gotten permission to convene here this afternoon by the Senate. We shall come back at 2:15. Several Senators have requested that I inform you that they would like you to be back for some further questions they have to ask you.

Senator HART. Mr. Chairman, I wonder if I might be permitted, before we recess, to note for the record and for all of us here that throughout the hearing this morning, there has been present the Minister of Justice of the Republic of Niger, the former ambassador from that country to this country. He has been sitting here throughout the hearing.

Senator JOHNSTON. I appreciate the Senator's calling that to our attention.

Attorney General KATZENBACH. Mr. Chairman, I might say this: there are certain events going on in Montgomery this afternoon. If there should be any indication of any difficulties in that regard, I would appreciate it greatly if I could notify the chairman and perhaps testify when those difficulties, which I do not anticipate, but if there should be any difficulties or any indication of them, I feel that perhaps it might be important for me to be where I can be in communication with various Federal officials who are on the scene.

Senator JOHNSTON. May I suggest, then, that you get in touch with our chairman and so inform him?

Attorney General KATZENBACH. If it is difficult for me to be here at 2:15, I would like permission to do that. Otherwise, I shall be here at 2:15 if things seem to be going well.

Senator JOHNSTON. Very well.

The committee is recessed until 2:15 this afternoon.

(Whereupon, at 12:10 p.m., the hearing was adjourned, to reconvene at 2:15 p.m., on Thursday, March 25, 1965.)

AFTERNOON SESSION

The CHAIRMAN. Come to order, please.

Mr. Attorney General, I am going to ask you this question: did you have any discussions with Mr. Ramsey Clark, Deputy Attorney General, on the reasons why Texas was not covered in this bill?

STATEMENT OF HON. NICHOLAS deB. KATZENBACH—Resumed

Attorney General KATZENBACH. I do not recollect any such conversations, Mr. Chairman. We are aware of the fact that there were no literacy tests in Texas.

The CHAIRMAN. Just answer my question.

Attorney General KATZENBACH. I do not recollect any such conversations, and I do not believe that there were any such conversations.

The CHAIRMAN. Yes, and no member of your staff, then, met with the minority staff, or made any such report to you, is that correct, at which you were not present?

Attorney General KATZENBACH. No, Mr. Chairman. The question may have been whether Texas is covered or not and the answer would have been it is not, because it does not have a literacy test, but there is no scheme to eliminate Texas as such, and no discussion about how do we keep Texas out of this act.

The CHAIRMAN. Now wait a minute. That came up, that what was considered was your bill that was drafted in the Justice Department, was it not?

Attorney General KATZENBACH. Yes, Mr. Chairman.

The CHAIRMAN. And that excluded Texas, did it not?

Attorney General KATZENBACH. Yes, based on literacy tests only.

The CHAIRMAN. Yes, sir, and that question came up. Your Deputy Attorney General discussed it at length as to why Texas should not be included, but did not discuss it with you?

Attorney General KATZENBACH. He did not discuss it with me, Mr. Chairman.

The CHAIRMAN. That is all I wanted.

Senator HART. Mr. Chairman, while we have a pause here, I think it would be well for the record to have a little elaboration on the history of the poll tax in Mississippi. We had some exchange on that. It appears from a Mississippi Supreme Court decision in 1896 that the constitutional convention that established the poll tax clearly did so for the purpose of making voting a difficult activity on the part of the Negro.

The CHAIRMAN. Now, that is your conclusion. You did not go back far enough. It was Reconstruction legislation that passed it. The money from it was to finance the school system. Of course, we had a constitutional convention in 1890 that carried it on.

Senator HART. The Chief Justice—

The CHAIRMAN. The feeling was that if you could not pay the tax, you could work it out on the public roads.

Senator HART. The Chief Justice, in writing this unanimous opinion, said that he who reads the constitution of 1890, and he describes the comparison with the earlier constitution, reaches the clear conclusion that it is evident therefore that the convention had before it for consideration two antagonistic propositions.

In our opinion, the clause was primarily intended by the framers of the constitution was a clog upon the franchise, and secondarily and incidentally only as a means of revenue.

* * * When we consider the fact that a very large proportion of those it was thought desirable to exclude from the exercises of the franchise owned no other property than that which had for many years been exempted from taxation, the conclusion becomes irresistible that it was intended to leave the payment of the tax to the voluntary action of those who owned no other than nontaxable property.

I ask, Mr. Chairman, consent that the record contain the *Ratliff v. Beale* case, since it bears on the earlier discussion.

The CHAIRMAN. Sure, but why do you not put the whole record in? The poll tax was an old institution.

Senator HART. If there is no objection.

The CHAIRMAN. It will be admitted.

(The case referred to, pp. 865 to 869, Southern Reporter, vol. 20, is as follows:)

The CHAIRMAN. The poll tax was an old institution in 1890.

Senator HART. The reason I think the record profitably can carry this opinion is that in an earlier exchange with the Attorney General, it was said that the poll tax was the creature of a Reconstruction legislature, and the implication was that it was not intended as a means of evading the 15th amendment.

The CHAIRMAN. That is what I said.

Senator HART. The Chief Justice in Mississippi, writing this opinion in 1896, when we were reasonably close to the era—

Senator ERVIN. What was his name, incidentally?

Senator HART. Cooper.

Senator ERVIN. One of my grandfather's first cousins, once removed.

Senator HART. He is doubly qualified, then, for this record.

The CHAIRMAN. How could it be discriminatory when everybody, white or black, had to pay it, and if they did not pay it, they worked it out on the roads?

Senator HART. This is the way Chief Justice Cooper puts it—

The CHAIRMAN. I do not understand the logic in what you are saying.

Senator HART. In what he is saying.

The CHAIRMAN. If he did not pay it, he had to work it out on the roads.

Senator HART. He makes very clearly, I say in defense of your relative—I want to make it clear for the family's sake that he does not undertake to criticize the action of the constitutional convention. But he does make very clear that it cannot be doubted that the question involved in the settlement of the electoral franchise had been the subject of more reflection and thought for a period of many years "than was bestowed upon all other subjects as to which our Constitution underwent material change. Not only in this State, but throughout our sister States, thoughtful and anxious men turned upon the solution of the question all the light to be gathered from history or speculation."

Not only was the question of the franchise a most difficult one for solution by reason of its nature, but there was added to its treatment the limitations upon State action imposed by the amendments to the Federal Constitution.

The difficulty, as all men knew, arose from racial differences. The Federal Constitution prohibited the adoption of any laws under which a discrimination should be made by reason of race, color, or previous condition of servitude.

It would too much extend the volume of this opinion to enter upon a review and examination in detail of all the provisions of our recent constitution in which the subject of the electoral franchise, and its cognate one of the selection of governmental agencies, is dealt with.

It is evident, therefore, that the convention had before it for consideration two antagonistic propositions. And he concludes:

One, to levy a poll tax as a revenue measure, and to make its payment compulsory; the other, to impose the tax as one of many devices for excluding from the franchise a large number of persons which class it was impracticable wholly to exclude, and not desirable wholly to admit. In our opinion, the clause—

And I might interpolate there he was referring to the 15th amendment—

was primarily intended by the framers of the Constitution as a clog upon the franchise and secondarily and incidentally only as a means of revenue.

The CHAIRMAN. You adopt the extreme construction, because there is not a word about race there.

Senator ERVIN. I am prepared to eliminate the poll tax.

Senator HART. I think your kinsman, if he had been a member of the convention, would have adopted it.

The CHAIRMAN. A man had to, regardless of his race, pay the poll tax.

Senator ERVIN. That is very sound, and I think he knew more about the poll tax than some other people. He knew that they were relying upon the poll tax long before the 15th amendment was adopted. There was a poll tax in North Carolina while it was still a colony of Great Britain. That was one of the accepted modes of taxation. We abolished another tax back in 1919, but we had a poll tax and still have one.

Senator HART. We can extend this until Senator Hruska returns. Let me indicate the reasoning behind Justice Cooper's opinion.

Senator ERVIN. The reason I added that is because he was a constitutional lawyer.

Senator HART. Here is what he said with respect to the two comparisons between the constitution adopted immediately following the war and the constitution of 1890. Very clearly, his construction that it was aimed primarily at disenfranchising Negroes was sound. I think this is relevant to the question of whether we can establish that the origin and purpose initially of the poll tax was to discriminate; we would have a constitutional basis under the 15th amendment—

The CHAIRMAN. How could there be a discrimination when all the man had to do was pay \$2 regardless of his race? I cannot see that. Where is there a discrimination?

Senator HART. I think he has answered it in this way, and if you will bear with me—

The CHAIRMAN. A man, if he did not want to pay it, did not have to pay it.

Senator HART. I think I can use Chief Justice Cooper as the author of the answer of that question:

He who reads the constitution of 1860 and that of 1890 will have his attention arrested by the marked difference in the number and character of the provisions of the franchise, and the selection of the chief magistrate of the State. The constitution of 1860, in its single article on the franchise (sec. 2, art. VII), provided simply that "all male inhabitants of this State * * * 21 years old and upward, who have resided in this State for 6 months and in the county 1 month next preceding the day of election * * * and who are duly registered * * * are declared to be duly qualified electors."

* * * The corresponding article in the constitution of 1890 (sec. 241) is as follows: "Every male inhabitant of the State * * * 21 years and upward who has resided in the State for 2 years and 1 year in the election district, or in the incorporated town or city in which he offers to vote, and who is duly registered as provided in this article * * * and who has paid on or before the 1st day of February of the year of which he shall offer to vote, all taxes which may have been legally required of him * * * and who shall produce the officers holding an election satisfactory evidence that he has paid said taxes * * *" shall vote.

The CHAIRMAN. Now, you say "discrimination." You point out the discrimination there.

Senator HART. I think he does. I think he points out the purpose behind the second constitutional requirement.

The CHAIRMAN. Where is the discrimination?

Senator HART (continues reading):

* * * restrained by the Federal Constitution from discriminating against the Negro race, the convention discriminated against its characteristics and the offenses to which its weaker members were prone. A voter who should move out of his election precinct, though only to an adjoining farm, was declared ineligible until his new residence should have continued for a year. Payment of taxes for 2 years at or before a date fixed many months anterior to an election is another requirement, and one well calculated to disqualify the careless.

Senator ERVIN. "Careless."

Senator HART. That was his gentlest term for "discrimination."

Senator ERVIN. "Careless" does not apply to white as well as colored?

Senator HART. Of course it does.

He says further:

In the article of franchise is found the section we have under consideration. True, as argued by counsel, it was a revenue measure, for it imposes a tax. But it is also true that the payment of the tax is one of the qualifications of an elector and the question is whether its primary purpose is for revenue, with incidental disqualification to vote attached upon its nonpayment, or whether the tax was levied primarily as an additional disqualification to those who should not pay out, with the incident of revenue derivable from those who should pay.

The CHAIRMAN. Of course, all the man had to do was pay his tax, which was levied on both white and black alike.

You do not know anything about poverty. I remember in the depression, the biggest property owners we had in the State could not pay their poll tax, and therefore could not vote.

Senator HART. Mr. Chairman, I think this exchange will encourage readers of the record to read in full Mr. Chief Justice Cooper, whose opinion, as I understand it, we have been authorized to print at this point in the record.

The CHAIRMAN. Yes, sir. But I still have not seen the discrimination. Anybody could pay it. If a man did not want to pay it, did not want to vote, he did not have to pay it. We did not have an Appalachia then.

Senator HART. Mr. Attorney General, are you aware of any other State where the evolution of the poll tax is comparable as described by Justice Cooper?

Attorney General KATZENBACH. I believe there is at least one other State where there is some indication in the debates that it was thought it would have the effect of a greater impact on Negroes than on whites, even though, as the chairman has pointed out, it was in form nondiscriminatory.

The CHAIRMAN. Certainly it was nondiscriminatory, placed on everybody.

I would like to ask you this question: Who has the power to fix qualifications of voters under the Constitution of the United States?

Attorney General KATZENBACH. It is left to the States, Mr. Chairman.

The CHAIRMAN. Now, what section of the Constitution is that?

Attorney General KATZENBACH. Article I—

The CHAIRMAN. Section 2.

Attorney General KATZENBACH. Section 2.

The CHAIRMAN. Now, does the 15th amendment repeal that, repeal article I, section 2?

Attorney General KATZENBACH. No, Mr. Chairman. It does not repeal it as such.

The CHAIRMAN. If this bill does not repeal it as such, please explain what you mean by that.

Attorney General KATZENBACH. What I mean is that under section 2 of amendment 15, the Congress is given power to effectuate the purposes of the 15th amendment, and if, in the judgement of Congress it was necessary in doing that to suspend the qualifications, which

were, in their judgement on the basis of the record in front of them, had been used by States for discriminatory purposes, then I think that article II would give the power to suspend what would ordinarily be a right of the State under the Constitution.

The CHAIRMAN. What you say is that it does not appear that it suspends article I, section 2?

Attorney General KATZENBACH. Yes.

The CHAIRMAN. Senator Fong.

Senator FONG. Mr. Chairman, I have only a few questions to ask the Attorney General. I have been pretty well satisfied with the testimony of the Attorney General and the answers he has given to the questions put to him.

Mr. Attorney General, I want personally to commend you for your very frank and forthright, comprehensive, and well-documented testimony which you have given us for the past 2½ days.

Attorney General KATZENBACH. Thank you, Senator.

Senator FONG. You have, I think, presented a most compelling case for the prompt enactment by Congress of effective legislation protecting the voting rights of all Americans. I am in wholehearted agreement with you and I think, as you do, that such legislation is long overdue.

Mr. Chairman, I ask unanimous consent that a statement which I have prepared on the Senate bill be included in the record at this time.

The CHAIRMAN. Yes, it will be admitted.

(The statement referred to follows:)

Mr. Chairman, the right to vote, the right to choose our own leaders, is the most fundamental right of all on our free democratic system of government. It is a right which Thomas Jefferson described as "the ark of our safety." It is a right which indisputably must be extended to every American citizen.

The 15th amendment to the Constitution provides that "the right of the citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." It directs that "Congress shall have the power to enforce this article by appropriate legislation."

Yet, nearly a century after the adoption of this amendment, many of our fellow citizens are being unconstitutionally disfranchised on the basis of their race and color.

Six times during the past 17 years Congress has passed "appropriate legislation" to eradicate this deep and very unjust flaw in American democracy.

In 1948 Congress passed three laws making it a felony to deprive a citizen, or to conspire to deprive him, of any constitutional right, or to intimidate him for the purpose of interfering with his right to vote. These laws were very ineffective, because of the virtual impossibility of securing convictions from southern juries and because they did not provide a way to register Negroes.

In 1957, during the Eisenhower administration, Congress passed a civil statute empowering the Attorney General to initiate suits for injunctions against discrimination in voting and intimidation. This law also was very ineffective because of the long periods of delay involved in judicial litigation.

Suit had to be brought to get registration records, which were often destroyed. Again, there was the problem of getting Negroes registered, even after a suit proving discrimination had been won.

In 1960, the Eisenhower administration proposed, and Congress passed, a law allowing the Attorney General, after winning a suit under the 1957 act, to ask the court in another proceeding to find a "pattern or practice" of voting discrimination in the area involved in the suit.

If the court so found, any Negro in the area who complained that he had not been allowed to vote could ask the court to issue an order declaring him qualified. The court could appoint a referee to take evidence and make a finding. Then either the court or the referee could issue a certificate declaring the Negro qualified.

The process of assembling proof to convince some judges of a pattern or practice was extremely difficult and time consuming.

Further, there was still the untouched problem of discriminatory use of application forms and literacy, or interpretation, tests by registrars.

To deal with this problem, Congress, in the historic Civil Rights Act of 1964, prohibited registrars from applying different standards to Negroes on application forms and interpretation tests. Registrars also were prohibited from disqualifying applicants for inconsequential errors or omission; such as, crossing a "T" or making an error in giving their age in years, month, and days.

None of these enactments have been effective.

Litigation on a case-by-case, county-by-county basis simply has not and cannot work. Even when a favorable judgment is won, some State and local authorities have unfairly applied voting qualifications and standards of eligibility to many of our Negro citizens.

In addition, some State legislatures have been inventive and ingenious in devising new voter requirements—even after decisions had been won striking down old ones as discriminatory.

Current voter registration figures show that legislation effectively to implement the 15th amendment is a vital necessity.

In each of nine Southern States, comparative statistics clearly reveal that the number of Negroes registered to vote, shown as a percentage of the total eligible, is far below the figures for whites, as follows:

Percentage of voters registered

	White	Negro		White	Negro
Mississippi.....	70.2	5.7	South Carolina.....	75.7	37.2
Alabama.....	69.2	19.2	Arkansas.....	65.6	40.3
Georgia.....	62.8	27.4	North Carolina.....	90.8	48.5
Louisiana.....	80.6	52.0	Florida.....	74.8	51.2
Virginia.....	59.2	34.2			

The bill now pending before this committee, S. 1564, which I have sponsored along with a bipartisan group of 65 Senators, is, I believe, a good, strong bill giving the Federal Government power to intervene in States, localities, and counties where voting rights have been manifestly denied Americans.

It is designed to deal with the principal means State and local governments have used to frustrate the effective implementation of the 15th amendment, and in important respects follows the bill, S. 1517, which a bipartisan group of 10 Senators, including myself, introduced earlier.

S. 1564 would—

Apply to all elections, local, State, and Federal;

Empower Federal Government officials, applying a simple, uniform standard, to register eligible voters in localities which refuse to do so;

Eliminate the necessity of tedious lawsuits which delay the right to vote;

Insure that properly registered voters are not prohibited from voting.

Under the bill, in certain Southern States and their political subdivisions, where less than half the voting population was registered or participated in the last presidential election, presumption of past discrimination will be automatic, and no literacy test or other qualifying test will be allowed to bar anyone from the ballot box.

I congratulate the distinguished bipartisan leaders of the Senate and the distinguished Attorney General for having worked out this excellent bill. Their statesmanship and tireless efforts have produced this very meritorious measure in a very critical juncture of the movement of our fellow Americans to gain equality and justice.

I pledge my full support in pressing for the most expeditious Senate action on this bill.

While I give my active support to S. 1564, I believe it can be improved in several respects. It is my intention to work for such improvements, including the following:

1. The abolition of the poll tax as a requirement for voting in State and local elections.

2. Removal of the requirement that Negroes, long harassed by local officials, must in some cases again apply to the same officials before they can register with a Federal examiner.

3. Extension of coverage to counties in at least four States now covered in S. 1564, where, although no literacy tests apply today, less than 25 percent of the Negro population was registered in 1964.

It is the task of the Congress to examine carefully each section of S. 1564, with a view to forestalling every technique of potential frustration or nullification, and to plug every loophole.

This committee should swiftly report out this measure, and the Congress should promptly enact this strong, unequivocal voting rights legislation. As the President said in his message to the Congress, there must be no delay, no compromise, and no hesitation to do so.

The Nation has already waited far too long for effective legislation guaranteeing, once and for all, the right of the franchise to all Americans, and the time for waiting is gone.

To deny any American citizen the blessings of liberty is to commit grave injustice; it is to deny the noble ideals of equality, justice, and human dignity on which our country was founded.

The Constitution of the United States commands it. An outraged conscience of our Nation demands it. The grave concern of many nations of the free world urge it. The harsh judgment of history awaits our action. The tide of freedom will not be stayed.

For the dignity of our fellow citizens and for the destiny of our democracy, we in the Congress cannot but act to vindicate the cause of all Americans, to do justice, and, in the eyes of God, to do the right.

Senator FONG. Mr. Chairman, the bill now pending before this committee is, I believe, a very good bill, a strong measure. I want to congratulate the Attorney General and the distinguished leaders of the bipartisan group for working out this very excellent proposal. To me this is a very effective bill and I am satisfied that it is constitutional. I just want to ask the Attorney General a few questions, because most of the questions which I have wanted to ask him have already been answered by him.

Mr. Attorney General, turning to section 2 of the bill, which reads as follows:

No voting qualification or procedure shall be imposed or applied to deny or abridge the right to vote on account of race or color—

there is no definition of the word "procedure" here. I am a little afraid that there may be certain practices that you may not be able to include in the word "procedure."

For example, if there should be a certain statute in a State that says the registration office shall be open only 1 day in 3, or that the hours will be so restricted, I do not think you can bring such a statute under the word "procedure." Could you?

Attorney General KATZENBACH. I would suppose that you could if it had that purpose. I had thought of the word "procedure" as including any kind of practice of that kind if its purpose or effect was to deny or abridge the right to vote on account of race or color.

Senator FONG. The way is now written, do you think there may be a possibility that the Court would hassle over the word "procedure"? Or would, probably, it allow short registration days or restricted hours to escape this provision of the statute?

Attorney General KATZENBACH. I do not believe so, Senator, although the committee might consider that. The language was used in the 1964 act on a similar matter, did use the terms "standards, practices, or procedures." Perhaps that would be broader than sim-

ply the word "procedure" and perhaps the committee might consider making that point clear.

Senator FONG. You would have no objection to expanding the word "procedure"?

Attorney General KATZENBACH. No; it was intended to be all-inclusive of any kind of practice.

Senator FONG. I know that in section 3(a) you have very much in detail spelled out the words "test or device."

Attorney General KATZENBACH. Yes.

Senator FONG. But you have not spelled out the word "procedure." I think that the word "procedure" should be spelled out a little more.

Attorney General KATZENBACH. I think that is a good suggestion, Senator.

Senator FONG. Now, in a case like that, if there were such a law on the books and the registrar followed the law in preventing the registration of voters, because of the shortness of hours, under the penalty section, who would be penalized? That is section 9(a).

Attorney General KATZENBACH. I believe it would be possible to bring a case against the registrar in such instances. The difficulty with a criminal sanction there would be if he was simply following something that was constructed under State law, in which case I think probably a civil remedy provided by section (d) would be more appropriate. Or, indeed, the appointment of a Federal examiner would simply commence dealing with such a situation.

Senator FONG. You were not referring—you would not resort to criminal prosecution?

Attorney General KATZENBACH. Not without a considerable amount of evidence that he was acting on his own in doing this. We would have to show—a burden under the criminal case, as you realize, Senator, is a much heavier burden than when people are fussing around the edges of discrimination. It is much more difficult to bring a criminal case and bring it effectively.

Senator FONG. Along the same line, under section 7, we talk about bringing a prosecution for a person who fails to permit a person whose name appears on a list transmitted in accordance with section 5(b) to vote.

Attorney General KATZENBACH. Yes.

Senator FONG. I presume that was intended to be an intentional failure rather than inadvertence?

Attorney General KATZENBACH. Yes; it would be.

Senator FONG. Would you have any objection if we added the word "intentional" refusal, to make it clearer?

Attorney General KATZENBACH. The difficulty with using the word "intentional" is always that in order to prove an offense, we have to show at least that the person intended the reasonable consequences of his act. We have to do that anyhow. When the word "intentional" is used, it therefore raises the question, in using that word, as to was some particular intent required. I would prefer to leave the section as it is, and under the general standard of showing that the reasonable consequences of the act were in fact intended than I would to increase the Government's burden to show something more specific with respect to the intent. I would prefer to leave it broader, Senator.

Senator FONG. I just wanted to fix the record up so we shall know what we are talking about. In your opinion, the intent is implied here?

Attorney General KATZENBACH. Yes, Senator; the same intent that is normally required in a criminal statute.

Senator FONG. In your answer to previous questions propounded to you, you felt that this bill should be predicated upon the 15th amendment. Right at the outset, it reads:

A bill to enforce the 15th amendment to the Constitution of the United States.

Attorney General KATZENBACH. Yes, sir.

Senator FONG. A group of bipartisan Senators has introduced another bill known as Senate bill 1517. In that bill, we have predicated it upon the grounds of the 14th and 15th amendments.

Attorney General KATZENBACH. Yes.

Senator FONG. We have put a section in there known as "Findings" and it reads as follows:

Sec. 2. The Congress finds and declares that the denial for infringement of the right to vote because of race or color is a violation of the fourteenth and fifteenth amendments of the Constitution of the United States and of the legislation adopted by the Congress to enforce those amendments, including the Civil Rights Act of 1957, the Civil Rights Act of 1960, and the Civil Rights Act of 1964. The Congress finds that, despite those enactments, the right to vote continues to be denied to many citizens of the United States on grounds of their race or color, and that the methods prescribed in this act are the only available means of assuring all citizens their right to vote.

Now, this bill, S. 1564, refers only to "to enforce the fifteenth amendment to the Constitution of the United States." Is there any objection to including the 14th amendment?

Attorney General KATZENBACH. I would have quite a strong preference not to, Senator. It is included in S. 1517, I believe, because of section 101(a) (i) of that bill, which refers to a 14th amendment violation, the unconstitutional segregation of educational and other facilities. I think that is the reason they referred to the 14th amendment.

I believe that S. 1564 as drafted can be squarely based on the 15th amendment, and I believe it is a more difficult constitutional argument, and not one that is necessary to make to say that prior violations of the 14th amendment expand in some way the scope of the 15th amendment.

Senator ERVIN. May I interrupt there?

Senator FONG. Yes.

Senator ERVIN. Has not the Supreme Court held in a number of cases that Congress has no power to legislate in respect to State and local elections, as distinguished from Federal elections under the 15th amendment?

Attorney General KATZENBACH. Yes, Senator.

Senator ERVIN. Therefore, it would be unsafe to base it on the 14th, would it not?

Attorney General KATZENBACH. I think the power is derived, and I think even S. 1517 really recognizes that the power is based on the 15th amendment, and the effort there, which was to provide a further justification for what was done because of prior violations of the 14th amendment, in my judgment, Senator, that is a difficult argument to make, one that is unnecessary and one that I think I would prefer, were I arguing this case in the Supreme Court, not to have to make.

Senator FONG. You feel, then, that it should be predicated only on the 15th amendment?

Attorney General KATZENBACH. Yes, I do, Senator.

Senator FONG. I think it does state, you did state that under the 14th amendment, you think Congress has the right by statute to eliminate the poll tax. Did I hear you say that, in your opinion?

Attorney General KATZENBACH. Under the 14th?

Senator FONG. Yes.

Attorney General KATZENBACH. No, Senator. I do not think they do. If the payment of poll taxes or the requirement for a payment of poll tax in order to vote exists, I think that could be in violation of the 14th amendment. That matter will be considered by the Supreme Court in its next term. The Court has held in the past that it was not. It is going to reexamine that question.

I do not see how a decision by Congress that it would be in violation of the 14th amendment would really add very much, if anything, to the argument that is already going to be made to the Court.

Now, I think, as I have explained, I think in answer to questions by Senator Hart and by others, you could eliminate the poll tax under the 15th amendment if you could show that its effect had been to disenfranchise Negroes in contravention of the terms of the 15th amendment.

The CHAIRMAN. That is based on discrimination?

Attorney General KATZENBACH. Based on discrimination.

The CHAIRMAN. How could that be true? What does "discrimination" mean? It means that one person of one race has a right that another race has not, is that not what it means?

Attorney General KATZENBACH. Yes, that is correct, Mr. Chairman.

The CHAIRMAN. Then where is the discrimination when both races have the right to pay the poll tax?

Attorney General KATZENBACH. Well, Mr. Chairman, I could conceive of situations where the poll tax was, the poll tax provisions were so written and so administered that the impact of this would be very different upon member of the two races.

The CHAIRMAN. How could that be true when both races have a right to pay the tax?

Attorney General KATZENBACH. It could be true if the tax were set at a figure, Mr. Chairman, that had the effect of disenfranchising or making it extremely difficult for 90 percent of the Negroes to pay and only difficult for 30 percent of the whites. I am speaking hypothetically.

The CHAIRMAN. Anybody can pay a \$2 poll tax.

Attorney General KATZENBACH. That is correct.

Anybody who has \$2 can pay a \$2 poll tax. But suppose the poll tax were set at \$200, Mr. Chairman.

The CHAIRMAN. But there is no such thing as that which exists. We are flying way off in the air.

Attorney General KATZENBACH. Forgive me, Mr. Chairman. I was talking hypothetically as to whether or not a poll tax could be. There are many laws that appear—

The CHAIRMAN. Do you agree that a \$2 poll tax, that any member of any race can pay is not discrimination? You do, do you not?

Senator HART. If you want to paraphrase Mr. Chief Justice Cooper, I think his answer would be—

The CHAIRMAN. What he said was some people would not want to pay it to vote. It was a decision that the individual made. That is what he said.

Senator ERVIN. Mr. Chief Justice Cooper merely held that in his opinion under the statute of Mississippi the poll tax did not constitute a lien upon nontaxable property.

Senator HART. That was the point of the opinion, not whether it was constitutional under the 15th amendment.

Attorney General KATZENBACH. I have no information, Mr. Chairman, which would lead me to believe that this point—I am not in possession of the facts—that a \$2 poll tax did operate in a way which would be a violation of the 15th amendment. Even under a law of that kind, Mr. Chairman, suppose that the person collecting the poll tax was quite willing to take it from whites and unwilling to take it from Negroes. If it were administered—

The CHAIRMAN. I know of no such instance as that.

Attorney General KATZENBACH. In Holmes County, Mr. Chairman, the sheriff would only accept poll tax payments from registered voters, although that is contrary to Mississippi law, and there were no Negroes registered. So under those circumstances, you might say the poll tax as administered—

The CHAIRMAN. But there are now.

Attorney General KATZENBACH. There are now, Mr. Chairman. And in the *Dogan* case, which we talked about a little bit yesterday, the sheriff refused to accept poll taxes from Negroes.

My point is one could adduce facts in particular instances where it might be in violation, where, as administered, it might be administered in a way which would violate the 15th amendment.

The CHAIRMAN. But you have all that you need to cope with the conditions you describe in Holmes and Panola Counties, have you not? You have coped with them, have you not?

Attorney General KATZENBACH. We have made efforts to cope with them, Mr. Chairman. But while, as the figures yesterday indicated, in Panola County, considerable progress has been made, in Tallahatchie County, we have the same broad decree by the same judge that we had in Panola County. Yet in that county, 52 whites applied since the date of the order; all were registered; 65 Negroes applied, 12 were registered, and the percentage of whites presently registered in Tallahatchie is—

The CHAIRMAN. What did the poll tax have to do with that?

Attorney General KATZENBACH. I was answering your question as to whether or not we had all the laws we needed to cope with the situation there.

The CHAIRMAN. You do.

Attorney General KATZENBACH. And I was disputing that by indicating that even under a broad decree, Mr. Chairman, having gotten the broad decree, we have still had a number of Negroes rejected for what we believe to be improper reasons.

The CHAIRMAN. If they were illegally rejected, all you would have to do would be to file a citation for contempt, would it not?

Attorney General KATZENBACH. That is what we have done, Mr. Chairman, and of course, that case is pending. But in the meantime, people are not being permitted to register, and we shall go up through another long process on contempt.

Senator FONG. As I understand it, Mr. Attorney General, in your personal opinion, you feel that the elimination of the poll tax by statute could probably be predicated on the 14th amendment?

Attorney General KATZENBACH. Yes; I think it would have to be, but I am not in possession of sufficient facts that it has in fact been used in a discriminatory fashion to make the sort of record that I think that would require, Senator.

Senator FONG. Yes; but between the 14th and 15th amendments, do you think the 14th amendment is a strong amendment to rely upon if we are to eliminate the poll tax?

Attorney General KATZENBACH. Yes; on the 14th amendment basis, it would have the advantage of eliminating it elsewhere. It is, I think, an undesirable law. That does not make it an unconstitutional law, but the Court may so find it.

I know the President has told me that one of the difficulties in Texas is that you forget to pay your poll tax, and this can be very embarrassing to a man in public office, because he cannot have the picture of himself voting for himself if he has forgotten to pay his poll tax. The President has told me this almost happened to him a couple of times, and it once did happen to "Pappy" Daniels. Actually, he was elected Governor, but he could not vote for himself.

Senator ERVIN. Maybe Pappy was too busy passing the biscuits.

Personally, I would say a public official who forgets to pay his poll tax ought not to be a public official.

Senator FONG. I can understand how a person can forget to pay his poll tax.

You would agree that under the 15th amendment, if a poll tax were used to discriminate against a person because of race or color, you could build a case on the 15th amendment?

Attorney General KATZENBACH. Yes.

Senator FONG. But under section 5 you do impinge upon the poll tax. You do say that if a person owes some money for several years back he will only be required to pay for the present, current year?

Attorney General KATZENBACH. Yes.

Senator FONG. You are relying upon the 15th amendment, although you say the 14th amendment is a more reliable amendment. Why do we not put the 14th amendment also in here, even though it may be redundant?

Attorney General KATZENBACH. I do not think in this instance the 14th amendment would be applicable. Here we are putting it on the 15th amendment, on the theory that this person having been discriminated against in violation of the 14th amendment by the use of tests and devices had no incentive to pay his poll tax, and perhaps was even, in some instances—we have some evidence—unable to pay his poll tax if he were not registered. So we believe that since there were violations of the 15th amendment that kept him from being registered, there was no incentive to pay the poll tax; perhaps he could not even pay the poll tax. It is then justified to forgive back poll taxes and require him only to pay the present year.

It is not the 14th amendment grounds which we urge here. The 14th amendment grounds really would just depend upon the fact that all poll taxes restrict the franchise in ways that deny due process of the law or equal protection of the laws as a prior condition to partici-

pation in the processes of government, and therefore, you cannot insist upon their collection as a precondition to the right to vote. That is the issue which is before the Supreme Court now.

Senator FONG. I think in reply to Senator Javits' question as to whether we should include the elimination of poll tax in this bill, you stated that we may jeopardize the bill. Is that correct?

Attorney General KATZENBACH. Well, it will jeopardize that section of the bill, Senator. The difficulty that I see, and perhaps it can be handled differently, but the difficulty that I see is if you say no payment of the poll tax is required, then that section of the bill were to be declared unconstitutional; you would leave in force all of the present poll tax provisions. People who have been registered under the Federal examiners or registered by State registrars in accordance with this law that had not paid their poll tax 19 months ago, or whenever it might be, might be frustrated once again in their desire to vote.

So if the committee should make the effort to do that on 15th amendment grounds, it would have to take account of—and the other problem which I think is the more important problem, much as I dislike the poll tax, I think it is much more important to get people voting. It would be terrible to have thousands of people registered, anticipating that for the first time in their lives they could cast a vote, then to find that the provision on poll taxes was declared unconstitutional and once again they could not vote. That would be a tragic circumstance which I think should be avoided.

I would be hopeful that the Supreme Court may well throw out all poll taxes next year and if it does, so much the better.

Senator FONG. Thank you.

Senator ERVIN. While you and the Senator from Hawaii are trying to unscrew the inscrutable I am going to ask questions about Hawaii and North Carolina, but I do not want to interrupt you. Before you go, I want to do that.

Senator FONG. Under section 3(a), the Federal voting examiners can be appointed only if, on November 1, 1964, in a State or political subdivision, less than 50 percent of the persons of voting age were registered or voted in the presidential election. Why do you pick the date November 1, 1964, and do not say from then on? Is this a one-shot deal?

Attorney General KATZENBACH. This was section 3(a)!

Senator FONG. Yes. You pick the date of November 1, 1964.

Attorney General KATZENBACH. We picked the date of November 1, 1964.

Senator FONG. I am not quarreling with the date. I am just saying that you pick a date and then do not come forward with it. It seems as though you are shooting for a one-shot deal and then quitting. Why do you not add the words "and thereafter."

Attorney General KATZENBACH. Well, the words "and thereafter" could be inserted. But the reason why this past date was taken was because it makes it possible for Congress to make the judgment that upon examination of the record, the reason, at least on this date, why there were so few registered or voting on November 1, 1964, was the presence of and the existence of these tests, was the probability that people had been prevented from registering and voting on account of racial discrimination. We took that date because the greatest num-

ber of, percentage of voters in recent years, at least, voted on that date. So that was not the general reason for their not voting.

Second, the national average was about 11 points higher than the 50 percent figure taken here. Therefore, it seemed to us that there was a reasonable connection established between discrimination, a violation of the 15th amendment, and that date.

Senator FONG. Would it do much violence to the bill to add the words "and thereafter"?

Attorney General KATZENBACH. Well, I think it would permit a certain amount of manipulation of figures by States, possibly, in order to get out from under the provisions.

Senator FONG. Now, according to section 3(a), you refer to persons of voting age residing therein, 50 percent of persons of voting age residing therein.

Attorney General KATZENBACH. Yes.

Senator FONG. In a State like my State, Hawaii, and I presume there are quite a few States in the south who have the very large military population—

Attorney General KATZENBACH. Yes.

Senator FONG. Many of them do not care to vote in the State because they have their own domicile elsewhere. They have their dependents—in my State, for example, out of a population of 700,000, we have approximately 70,000 of that 700,000 military personnel and another 70,000 military dependents, 140,000 military personnel and dependents. Over and above that, we have a very big alien population of about 46,251. When you add the military personnel together with the alien population, we have a total of 174,000 people in a population of 700,000.

I was wondering, in presenting figures like that, whether something should be done to apprise the public that in States like Hawaii, States where there is a strong, big military and alien population, the small figure of the number of people who are voting, registered or voting age, cannot be told? Can you see any way in which that story can be told, not to reflect the—

Attorney General KATZENBACH. That may account for the reason which I think Senator Ervin may have been coming to, as to the voting figures in Hawaii, why they were low. But we checked the figures which I have already introduced here before the committee, Senator, and if you excluded all of the military personnel and their dependents, you would find that with respect to the States covered except Alaska, the percentages would not affect coverage.

Senator FONG. Thank you, Mr. Attorney General.

Senator ERVIN (presiding). Incidentally, the nonvoting age population of Hawaii is 395,370. In the last election, only 52.5 percent of them voted.

Attorney General KATZENBACH. Yes.

Senator ERVIN. But the law does not apply to them. In North Carolina, we voted 51.8 percent of all our voting population.

In other words, Hawaii, with a fine candidate like my good friend, the Senator from Hawaii, running—

Senator FONG. Thank you.

Senator ERVIN (continuing). They only beat North Carolina by seven-tenths of a point. I would like to know why these other people

in Hawaii, where they have no poll tax and no literacy test, did not come out and vote.

Senator FONG. Will the Senator yield?

Senator ERVIN. Yes.

Senator FONG. As I have stated, we have a very big military population and a very big alien population.

Senator ERVIN. And we have a very big military population. And two of the North Carolina counties that are denied the constitutional powers that all others have, Cumberland County and Craven County, if you eliminate the military population there—Fort Bragg is in Cumberland and Cherry Point is in Craven County—these two counties would have more than 50 percent of their population voting. Also Pitt County, where there is a college of about five or six thousand, the same tradition applies. Yet we have a bill under which North Carolina suffers a penalty. Whereas Hawaii, with a somewhat comparable situation, suffers no penalty, although it has only seven-tenths of 1 percent more voting. As we say in North Carolina, that is a cockeyed formula.

Senator FONG. I want to say that 89 percent of our eligible voters went to the polls in the election, and we have consistently hit 90 and 91 percent. The reason why we have such a low percentage of voters of the adult population is because of the tremendous number of military personnel there and the number of aliens.

Attorney General KATZENBACH. Yes; and if we eliminated the military personnel in at least the other States covered here, as I have said, actually, their percentage would not affect coverage. Apparently, at least half of the military people were voting in these States.

Senator ERVIN. We have in North Carolina the biggest Army post in the world. We have in North Carolina the biggest Marine post in the world; we have two Marine posts.

Attorney General KATZENBACH. Yes; I am familiar with them and they are great establishments.

Senator SCOTT. Mr. Chairman?

Senator ERVIN. The Senator from Pennsylvania.

Senator SCOTT. I come from a Commonwealth, Mr. Chairman, that does not have large military establishments because the States of North Carolina, Hawaii, and other States do.

Senator FONG. We are strategically located.

Senator ERVIN. We can say that North Carolina and Hawaii are worth defending.

Senator FONG. Yes.

Senator SCOTT. The Senator from North Carolina is belying the often quoted statement of humility pertaining to his State. As I recall it, he was accustomed to say that North Carolina is the valley of humility between two colossal mountains of conceit.

Mr. Attorney General, I would like to clarify a point in connection with section 5(d), about which Senator Hruska was inquiring this morning. If a person who had been listed failed to vote in three consecutive elections, and was thereby removed from the list, would he then be permitted to reregister at a later date, just as any other voter whose registration had lapsed would be permitted so to reregister?

Attorney General KATZENBACH. Yes, Senator.

Senator SCOTT. Mr. Attorney General, under section 6(a), challenge to the listing of an individual by a Federal examiner is limited to 10 days and can be made only upon two affidavits based upon personal knowledge. Would this limitation not make it virtually impossible to detect and challenge someone registering under fraudulent pretenses, and if so, would it not be preferable to insert a proviso here to the effect that where such challenge is based upon fraud or misrepresentation, it may be made at any time—that is, in the context of any reasonable time, such time to be fixed in the statute?

Attorney General KATZENBACH. I would think that would be perfectly reasonable, Senator. What has me concerned in some of these areas is the extent to which that kind of a threat can be used to discourage people from attempting to register.

I offer as an example the helpful law of one State which made criminal any false statements to any Federal official. They made that quite severely punishable.

Now, I think if your State, Senator, were to enact such a law, while you might think it was the business of the Federal Government to protect from false statement Federal officials, you would not have any great fear about it. I think that that law was enacted for the reason of attempting to discourage Negroes from making complaints to the Federal Bureau of Investigation when they were inquiring, or to state facts to Department of Justice attorneys if it is already criminal to make a false statement to a Federal official under Federal law. I say this with relationship to what you are saying, because the word "fraud," for example, as you know, is a somewhat expansible concept.

I get a little bit concerned about doing things here which could be used against that. For example, in Louisiana, indicated in *United States v. Thomas*, they purged thousands of Negroes from the registration rolls in Louisiana, allegedly for illegal registration. Now, we objected to that and the court found that they had really done it for racial reasons. Although in terms of the words used, you would be hard put to say that States should not be purging people who had been illegally registered, again, if that had been done in Pennsylvania, you would say why not do that?

But these laws have so often been abused that I get somewhat concerned. You see, they can be removed anyhow if they have otherwise lost their eligibility to vote under the previous page, under section 5(d), and I think false statements made to an examiner—that is, if you have the fraudulent situation, he comes in and says he has been a resident and has not been a resident, I have no question about the fact that those statements are punishable under Federal law, under section 1001 in any event. So I think we are protected against the fellow who fraudulently comes in and says this. If that is discovered, there is no 10-day limitation on that. What happens is that he is punished by a criminal prosecution which we can bring.

In addition, I think his name would be taken off under section 5(b).

Senator SCOTT. I was thinking here in terms of the fact that this would be a Federal law. It would not be a State law designed to evade registering people who want to be registered. We know that in many States, voting is accompanied; registration and voting are accompanied by fraud or misrepresentation which is not discovered within 10 days. I give you the instance in Pennsylvania which your Depart-

ment is presently investigating, an alleged fraud in the last primary. Even up to this point, you have not given us a report on whether or not fraud occurred in that primary in voting.

Attorney General KATZENBACH. Perhaps that illustrates how difficult it is to determine it, Senator.

Senator SCOTT. It does indicate how difficult it is to determine it. It also indicates that you may have found that you could act under present law to proceed against those who may be guilty of fraud in an election matter.

Attorney General KATZENBACH. We do have statutes that cover that in a Federal election. Most elections are Federal as well as State elections.

Senator SCOTT. If a challenge is based on fraud or misrepresentation, do you have any present remedy, did I understand you to say you have a present remedy which will take care of that under Federal law?

Attorney General KATZENBACH. With respect to voting, if a vote in a Federal election, yes, Senator, they may.

Senator SCOTT. Under section 3(a), the date of determination of the application of the formula is fixed at November 1, 1964. Does this not fail to provide for a State or county which subsequently falls below the 50-percent figure? I have in mind what Senator Fong was getting at.

Attorney General KATZENBACH. Yes, it does, Senator. The reason I think Congress can make a judgment on the facts presented and the record presented is that this is a reasonable date and there is a presumption created, if I can use that shorthand presumption, as to this date after Congress has looked at this election. I think when you include the words "and thereafter," you are weakening the constitutional basis, because you are saying that Congress has a crystal ball which would tell them that the reasons of future elections would be the same. I think there is an advantage to preserving that date and to making a finding based on that date were we have facts.

Senator SCOTT. I do not agree with you on that, but I am glad to have your answer.

Why do sections 9(e) and 3 protect only those voters who have been registered by Federal examiners in States or political subdivisions where a section 3(a) finding has been made? Should not all registered voters be protected? If not, the State or local authorities may register Negroes, but then interfere with others with impunity. The protection runs only to the registration of those who were registered by Federal examiners.

Attorney General KATZENBACH. Yes, that is correct as it is written. Your observation is correct that it only does protect those who are registered by Federal examiners. It does not protect those who might be registered by State registrars.

Senator SCOTT. Under the 15th amendment, should you not extend that protection to all persons registered?

Attorney General KATZENBACH. Yes, and I think perhaps 9(e) should include those registered pursuant to this law, rather than simply registered by Federal examiners. I would think that would be an improvement.

Senator SCOTT. I would suggest that you do consider putting that in as an improvement. You want your protection to be equal, it seems to me.

Attorney General KATZENBACH. Yes, I think it should be, Senator, and I do not think—my recollection on the drafting of this is, I do not have a recollection but that difficulty which you have raised was discussed. I think it is something the committee should consider.

Senator ERVIN. I hesitate to interject myself at this point, but Mr. Attorney General, I think you made a broad statement. The Senator from Pennsylvania asked you if you could not protect all people under the 15th amendment. The 15th amendment only protects people from being denied the right, or abridged in their right to vote because of race or color. That is the only protection.

Attorney General KATZENBACH. Everybody has a race or color, I suppose, so that in that sense, you protect them all.

Senator ERVIN. You can only have your right to vote denied or abridged on that basis, no other.

Attorney General KATZENBACH. On this, I most respectfully, Senator, would say that in this provision, you are dealing with a law based entirely on the 15th amendment. We are here dealing with how that law can be made effective. I believe it would be permissible to say here that persons registered pursuant to this act have to be voted.

Now, if you would assume with me that the act is found constitutional, I would think there would be no constitutional difficulty with that provision.

Senator DIRKSEN. Mr. Attorney General, I do not think that is the import of Senator Ervin's question. He means if you go beyond race or color, such as creed or national origin and so forth, you could not make it apply; you are limited under the 15th amendment.

Attorney General KATZENBACH. When I said pursuant to this act, I am talking about people registered pursuant to an act based on the 15th amendment, based on race or color. If that formula should be upheld, I see no difficulty with the amendment of section (e) here to effectuate provisions of the act.

Senator SCOTT. Well, one of the reasons given for fear of the act by some people has been that you might have a Negro registry board or predominantly Negro registry board. I have in mind the fact that this, though I hesitate to use the disreputable or discriminatory phrase, is applied to white trash and you might have the reverse situation. I see no reason why it should not be taken in both ways.

In other words, you are not going to assume that if this law passes, all registration boards are going to be white, for example, and you do have a reverse discrimination.

Attorney General KATZENBACH. It is possible, Senator.

Senator SCOTT. It is not only possible, but, I think it is conceivable. That is why I make the point.

I do not know whether you have done this, but I would comment that it would be helpful to me and I think some of the other sponsors of S. 1517 if you could, for us, either publicly or for our confidential assistants, furnish us some commentary on this S. 1517 stating why you cannot accept those provisions which are there. It may be that for reasons of your own, you might not want to do that. But I suggest it would be helpful to us.

Attorney General KATZENBACH. I have no objection to going through 1517. I shall do it now, Senator, or submit it in writing if

you wish, tell you what our views are on various sections of that act that differ from this act.

Senator SCOTT. It might be better if you submitted it in writing. I have in mind someone else may want to ask some questions today, and I have one or two more. You may submit it to me or to the chairman, if you wish.

Attorney General KATZENBACH. I shall submit it to the Chairman. (Subsequently, the following material was received by the committee:)

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., April 2, 1965.

Re commentary on S. 1517.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR SENATOR EASTLAND: At the recent hearings on S. 1504, the proposed Voting Rights Act of 1965, I was asked to submit a written commentary on S. 1517, a voting bill submitted by Senator Douglas for himself and nine other Senators. My principal comments are as follows:

1. The definition of the term "test" used in section 3(c) of S. 1517 is somewhat less comprehensive, and therefore not as satisfactory as the definition of "test or advice" appearing in section 3(b) of S. 1504.

2. The triggering system contained in section 101(b) of S. 1517 seems inappropriate on two grounds. First, it depends in part upon racial registration statistics, which, as I explained to the committee, are difficult to obtain and not always reliable. Second, section 101(b) contains a flat finding that wherever either of two statistical facts are found to exist "such test has been and is being utilized as an instrument of discrimination. * * *" It seems doubtful that Congress ought to make such an unqualified finding although an inference can surely be drawn that this is true in the generality of cases. Under S. 1504 such an inference is drawn by section 3(a) but provision is made in section 3(c) for an affected State or separate county to demonstrate in court that in its case the inference is unwarranted.

Section 104 of S. 1517, on the other hand, does not appear to provide a rapid or effective escape mechanism. It deals only with areas in which discrimination "has terminated," and makes no provision for the case, if any, of an area in which there has, in fact, been no discrimination. Nor is any means provided for an affected area to initiate any proceeding to avoid the impact of section 103, but rather the matter is left entirely in the President's discretion. Section 201(f) of S. 1517 seems open to a similar objection.

3. Section 201(a) of S. 1517 would require the President to appoint a registrar in any voting district where less than 25 percent of nonwhite persons of voting age were registered to vote in the 1964 presidential election. Again, racial registration figures are not everywhere available or always accurate. Moreover, the 25 percent might well reach a substantial number of areas of the country where there would be no good reason to appoint registrars, but nonetheless the President would be compelled—even absent any complaints—to do so on the basis of statistics alone.

4. Sections 202 and 203(a) of S. 1517 provide that registrars appointed in any voting district shall register persons who meet State qualifications relating to age, residence, citizenship, mental competency, and absence of conviction of a felony, and that no other State qualification shall be required of applicants by any Federal registrar. These provisions would take effect in any area in which an examiner has been appointed, in some instances without any sufficient nexus with voting discrimination, and without an adequate escape mechanism.

5. I, also, have constitutional misgivings about section 203(b), which, in effect, freezes in State qualifications relating to citizenship, age, residence, mental competency, or absence of conviction of a felony which existed on May 17, 1954, irrespective of later modifications of State law. The assumption of this provision seems to be that any change in these requirements subsequent to the decision in *Brown v. Board of Education* (347 U.S. 483), was made for the purpose of effecting voting discrimination. But it is difficult to see, for example, how that might be generally true of a State law raising or lowering the age require-

ment. I believe that section 8 of S. 1564 deals more appropriately with this kind of problem.

6. The abolition of poll taxes by section 302 also raises a constitutional question. As I pointed out during the hearings, a substantial question exists as to whether there is enough evidence of general abuse of the poll-tax requirement to justify its outright abolition by congressional mandate although, as S. 1564 provides, elimination of the cumulative feature of some poll-tax requirements would be desirable and valid. Moreover, S. 1517 makes no provision for collection of the tax by Federal registrars and would thus seem to imperil the registrar system if section 302 should be invalidated.

Sincerely,

NICHOLAS DEB. KATZENBACH,
Attorney General.

Senator SCOTT. For the benefit of others and the committee.

Attorney General KATZENBACH. Surely.

Senator SCOTT. Mr. Attorney General, you have testified in answer to Senator Javits' questions yesterday and this morning that you would find constitutional a further provision—that you would believe to be constitutional a further provision triggering Federal law examiners based upon a percentage of Negro citizens who are not registered to vote only if, one, either the Federal Government were given the burden of proving the accuracy of the figures, or, two, the figures were those supplied by the State in question itself, or three, the figures were supplied by the Bureau of the Census pursuant to, say, title 8 of the 1964 act. What I do not understand is why you feel the burden of proof must be on the Federal Government? In the balance of cases, there is such a provision.

The Civil Rights Commission has now published the figures by county and race for most of the States involved that are affected, pursuant to the obligation imposed by the 1957 and 1960 acts, for making investigations as to the denial of the right to vote on account of race or color. The Commission, has in its report, recommended legislation based on those statistics much like the registration we now have before us.

At the same time, we do not now have more adequate information about voting patterns, because the States and counties do not, in most cases, make such information available. I cannot see why, under the 15th amendment, the United States could not invoke this act based upon the Commission's figures, and then permit the States to come before the courts and disprove, if they wish, the Commission's figures if they wish and if they can. It is the States themselves who are responsible for the fact that better figures are not available, and I see no reason of policy or constitutional law why there should not be put to the proof as to the true state of the facts when the U.S. Commission on Civil Rights has made a prima facie case of discrimination on the only statistics which are available.

I have replewed some ground there, but I would like to get that into the legislation.

Attorney General KATZENBACH. Surely. I think under those circumstances, there would have to be at least grounds to question the figures. If the States simply do not have those figures, I do not think you can compel them to produce those figures. Perhaps if it falls within your language, I would not object to their being able to disprove the figures.

What I suppose they would do is to show the basis of the figures is not adequate, which I believe they would be able to do, except in those

instances where they had produced them and to show that it is not founded on any very solid basis.

As far as your projections from other figures or from small samples of that kind of thing, normally, we have not been able to persuade a court it is adequate proof of the integrity of the figures.

Senator SCOTT. I personally think there is a great deal in what you have said, actually. I think we wanted this in the figure and that is why we so stated it.

Going further, if you feel the ultimate burden of proof has to be placed on the Federal Government, would it not be possible to ease this burden through a provision requiring that the Government need only show that its figures are substantially correct? By that I mean with regard to the burden of proof, would it not be possible to require a party challenging the Government statistics to show more than just isolated instances of error, but a pattern of error once the Government had shown the method in which its figures were gathered, and established the probability that they were substantially correct? So long as they were substantially correct, would this not logically be enough for the purpose for which they are being used? That is, not to prove an exact statistical fact, but to raise a rebuttable presumption of discrimination in violation of the 15th amendment?

Attorney General KATZENBACH. Yes, I think it would, Senator.

Senator SCOTT. One final question, and before I ask it, let me say that I want to join in congratulating you on the very clear presentation you have made. I am certainly going to support the bill. I know that you are aware that some of us have argued for this long-stride approach in the 1960 and 1964 acts in one form or another.

In regard to the provision to have examiners who may be called in from States other than the State in which the testimony was taken and the registration occurs, would it not be preferable—I think you have commented once on this—would it not be preferable to have examiners who are resident in the State wherever feasible, and I have now in mind the declaration itself, the Declaration of Independence. As I recall it, the phrase goes like this: "He"—George III—"has sent hither swarms of officers to harass our people."

Now, from a libertarian standpoint, do we really want to send swarms of officeholders amongst these people if we can find suitable people who can feasibly conduct these examinations and who are residents of the State wherein the examination is conducted?

Attorney General KATZENBACH. No, we certainly do not. We certainly would prefer that hopefully, in all instances and certainly in many, it were feasible to use residents on the States involved, for the reasons you indicate and for other reasons as well.

Senator SCOTT. Thank you, Mr. Katzenbach.

That is all the questions I have.

Senator ERVIN. While you are calling attention to the Declaration of Independence, I would like to call your attention to the fact that the Declaration of Independence also says that one of the reasons the colonists were justified in severing their bonds with their country was "for transporting us beyond Seas to be tried for pretended offenses." I submit there is very little difference between that and transporting people to the District of Columbia.

Attorney General KATZENBACH. Senator, we are not transporting anybody to the District of Columbia.

Senator ERVIN. No, in the case of King George, he was more considerate. He furnished the transportation. Here you are requiring the people who are adjudged guilty by an act of Congress to furnish the transportation. Certainly you are little better—

Attorney General KATZENBACH. I agree with you so emphatically about local jury trials. That is what they were talking about in the Declaration of Independence.

Senator DIRKSEN. You only have to cross the Potomac from some places.

Attorney General KATZENBACH. That and taxation with representation. We are not doing any of those things in this bill, Senator.

Senator ERVIN. They have two different complaints. One was for depriving us in many cases of the benefit of trial by jury here in America. The next one was transporting us beyond the seas to be tried.

Attorney General KATZENBACH. Yes.

Senator SCOTT. If I can be a little archaic, Mr. Chairman, you have a defense to that if you feel that is liable to happen, and you can present the ancient plea of "Essoin de ultra mare."

Senator ERVIN. The bill is bad enough, I am confused enough, but with that French, it is even more confusing. [Laughter.]

Senator JAVITS. May I ask one more question, Mr. Chairman? It is on just one point. I was interested in your attitude on the poll tax as it related to the facts that you claimed that the poll tax was not being used as an instrument to violate the 15th amendment.

I am told by my staff, and you will correct me if I am wrong, that while I was speaking on the floor earlier in the afternoon, you made the same statement, and then rather shortly thereafter raised two cases of the Department itself, in which the Department used as the gravamen of its suit the poll tax in a 15th amendment case. Could you enlighten us?

Attorney General KATZENBACH. Yes. I raised two instances where the sheriff has refused to receive a poll tax on the ground, one, simply because it came from a Negro, and the other one the person was not registered, although he did that in violation of law, and the difficulty, I suppose, Senator, was that those are the only two cases we have involving poll taxes as a means of discrimination against Negroes.

Senator JAVITS. In view of the fact that such cases do occur, what would you think of the possibility of adding the poll tax as an additional item in section 8(a) to be a part of the concept of any test or device or any poll tax so that if it is used you could utilize that in respect of the administration of this act, if you find widespread use of a poll tax? The difficulty, as I see it, Mr. Attorney General, and the reason I asked the question is not that I challenge any of your conclusions, except that history of the frustration of voting rights has been sort of a series of ramparts, and now the test and device, that is the literacy test, is the fashion current. You knock that one down, and you get another because, as I recall it, when we passed the 1957, 1960 acts, we were dealing in many cases with naked intimidation, et cetera, the literacy test device had not quite come into the fashionable use that it did for this very discreditable purpose, and I raise with you the question of the poll tax and the possibility that if you do not cover it it will raise as yet another matter which then is pulled out, dusted off, and utilized to bedevil the situation when this literacy test business is hopeful.

Attorney General KATZENBACH. I would make two comments on that: (1) Senator, if you put it in section 3(a) as you suggested, you have, in effect, stated that the poll tax has been used for this purpose, and you have stated that on the record which does not as yet demonstrate that and, therefore, it seems to me you jeopardize all of the findings under this bill. If it is going to be dealt with, and the committee were to deal with it, I would think, if I may say so, that would be the poorest way of dealing with it.

Senator JAVITS. I understand.

Attorney General KATZENBACH. There would be a better way of trying to deal with the poll tax than that. I would say, secondly, that we have under section 8 frozen poll taxes to some extent where they are, if you follow what I mean to say.

Senator JAVITS. I do; I understand what you say exactly.

Attorney General KATZENBACH. So that new poll tax devices would have to run the gamut of judicial review under section 8. So we have done that much about them.

Beyond that, I have been thinking of the problem. The only kind of provision that I could think of would be one that would eliminate a poll tax in any State wherever we could establish to the satisfaction of the Court that the poll tax was being used in violation of the 15th amendment, and then, if we had the evidence or if it began to be used for that purpose, then we would have at least a means of not only going into court but conceivably suspending the poll tax for a period of time.

I have no thought through that. I do not know what the views of the committee would be on that, but I would like to keep it out of the automatic application in the absence of having some evidence that the poll tax in that particular State was being used in violation of the 15th amendment.

Senator JAVITS. Fine.

May I ask you to be seized then, then I shall cease, of this question, also including the fact that if you did something about the poll tax, you would be reaching States, including Texas, at least parts of States which are not reached here, and also the fact that economically the poll tax may itself be such onerous economic burden to extremely poor families notwithstanding what was said about the fact it was only \$2, it may represent a day's work, as to be a barrier, a real barrier, to voting.

I would like you just to be seized of that problem and if you can make any suggestion to me or if it is appropriate to the committee, I would appreciate it very much.

Attorney General KATZENBACH. You know, in Texas there have been many efforts to get rid of the poll tax in Texas, and efforts, I ought to say, which have been supported by the President.

The difficulty has been there, and I think it is elsewhere, that the funds from the poll tax have gone into education, so that immediately you have opposed to you all of the teachers and educators within the State, and it makes it a very difficult problem to get rid of it.

Senator JAVITS. Well, I have given you our concern about it. You have made a suggestion. Let us work with that and see what can be done.

Attorney General KATZENBACH. Very well.

Senator DIRKSEN. May I add there, actually under the broad language of section 2, you do not eliminate Texas from this bill. The question is whether under section 2, which is almost a rephrasing of the 15th amendment, you find discrimination, denial or an abridgment of the right to vote and—

Attorney General KATZENBACH. Yes.

Senator DIRKSEN (continuing). And it states specifically that if there are procedures or qualifications Texas does not escape. It is a question of whether you can establish it.

Senator JAVITS. And it is a question of any enforcement machinery as to section 2. I do not think you really have any in section 2.

Attorney General KATZENBACH. Criminal procedures for section 2.

Senator DIRKSEN. One other observation with respect to outlawing—

Attorney General KATZENBACH. A restraint, injunctive procedure.

Senator DIRKSEN. With respect to outlawing the poll tax entirely, you may have areas of discrimination where the poll tax is used, but now you are confronted with the degree of proof that you can have if you are going to make it statewide, and that is no easy task.

Attorney General KATZENBACH. That is right, Senator.

Senator JAVITS. Mr. Chairman, may I just clarify my question? All I wanted you to examine was a technique that did not apply to section 2 cases.

Attorney General KATZENBACH. No, that is correct; it does not. The only remedy there is in the criminal, and there is an injunctive remedy.

Senator JAVITS. And, of course, you have had no hesitancy about applying any remedy of the bill to parts of States, in answer to Senator Dirksen.

Attorney General KATZENBACH. No.

Senator JAVITS. Thank you very much, Mr. Chairman.

Senator ERVIN. Yesterday I called attention to the case of *Lassiter v. Northhampton County Board of Elections* (360 U.S. 45), *Williams v. Mississippi* (170 U.S. 213), and the case of *Günin and Beal v. U.S.* (238 U.S. 347) for the purposes of showing that the decisions of the Supreme Court hold that a State may adopt a literacy test which is applicable alike to persons of all races, and that when it does so that it is merely exercising a constitutional power which is not subject to Federal supervision. I hand the reporter photostatic copies of these three decisions to be put in the record at this point. (The cases referred to follow:)

LASSITER v. NORTHAMPTON COUNTY BOARD OF ELECTIONS

APPEAL FROM THE SUPREME COURT OF NORTH CAROLINA

No. 584. Argued May 18-19, 1959—Decided June 8, 1959.

1. A State may, consistently with the Fourteenth and Seventeenth Amendments, apply a literacy test to all voters irrespective of race or color. *Günin v. United States*, 238 U.S. 347. Pp. 50-53.
2. The North Carolina requirement here involved, which is applicable to members of all races and requires that the prospective voter "be able to read and write any section of the Constitution of North Carolina in the English language," does not on its face violate the Fifteenth Amendment. Pp. 54-55.

248 N.C. 101, 102 S.E. 2d 858, affirmed.

Samuel S. Mitchell argued the cause for appellant. With him on the brief were Herman L. Taylor and James R. Walker, Jr.

I. Beverly Lake argued the cause and filed a brief for appellee.

Malcolm B. Seawell, Attorney General of North Carolina, and Ralph Moody, Assistant Attorney General, filed a brief for the State of North Carolina, as *amicus curiae*, urging affirmance.

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This controversy started in a Federal District Court. Appellant, a Negro citizen of North Carolina, sued to have the literacy test for voters prescribed by that State declared unconstitutional and void. A three-judge court was convened. That court noted that the literacy test was part of a provision of the North Carolina Constitution that also included a grandfather clause. It said that the grandfather clause plainly would be unconstitutional under *Guinn v. United States*, 238 U.S. 347. It noted, however, that the North Carolina statute which enforced the registration requirements contained in the State Constitution had been superseded by a 1957 Act and that the 1957 Act does not contain the grandfather clause or any reference to it. But being uncertain as to the significance of the 1957 Act and deeming it wise to have all administrative remedies under that Act exhausted before the federal court acted, it stayed its action, retaining jurisdiction for a reasonable time to enable appellant to exhaust her administrative remedies and obtain from the state courts an interpretation of the statute in light of the State Constitution. 152 F. Supp. 295.

Thereupon the instant case was commenced. It was started as an administrative proceeding. Appellant applied for registration as a voter. Her registration was denied by the registrar because she refused to submit to a literacy test as required by the North Carolina statute.¹ She appealed to the County Board of Elections. On the *de novo* hearing before that Board appellant again refused to take literacy test and she was again denied registration for that reason. She appealed to the Superior Court which sustained the Board against the claim that the requirement of the literacy test violated the Fourteenth, Fifteenth, and Seventeenth Amendments of the Federal Constitution. Preserving her federal question, she appealed to the North Carolina Supreme Court which affirmed the lower court. 248 N.C. 102, 102 S.W. 2d 853. The case came here by appeal, 28 U.S.O. § 1257 (2), and we noted probable jurisdiction 358 U.S. 916.

The literacy test is a part of § 4 of Art. VI of the North Carolina Constitution. That test is contained in the first sentence of § 4. The second sentence contains a so-called grandfather clause. The entire § 4 reads as follows:

"Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language. But no male person who was, on January 1, 1867, or at any time prior thereto, entitled to vote under the laws of any state in the United States wherein he then resided, and no lineal descendant of any person, shall be denied the right to register and vote at any election in this State by reason of his failure to possess the educational qualifications herein prescribed: Provided, he shall have registered in accordance with the terms of this section prior to December 1, 1908. The General Assembly shall provide for the registration of all persons entitled to vote without the educational qualifications herein prescribed, and shall, on or before November 1, 1908, provide for the making of a permanent record of such registration, and all persons so registered shall forever thereafter have the right to vote in all elections by the people in this State, unless disqualified under section 2 of this article."

Originally Art. VI contained in § 5 the following provision:

"That this amendment to the Constitution is presented and adopted as one indivisible plan for the regulation of the suffrage, with the intent and purpose to so connect the different parts, and to make them so dependent upon each other, that the whole shall stand or fall together."

But the North Carolina Supreme Court in the instant case held that a 1945 amendment to Article VI freed it of the indivisibility clause. That amendment rephrased § 1 of Art. VI to read as follows:

"Every person born in the United States, and every person who has been naturalized, twenty-one years of age, and possessing the qualifications set out in this article, shall be entitled to vote."

That court said that "one of those qualifications" was the literacy test contained in § 4 of Art. VI; and that the 1945 amendment "had the effect of incor-

¹ This Act, passed in 1957, provides in § 168-28 as follows:

"Every person presenting himself for registration shall be able to read and write any section of the Constitution of North Carolina in the English language. It shall be the duty of each registrar to administer the provisions of this section."

Sections 168-28.1, 168-28.2, and 168-28.3 provide the administration remedies pursued in this case.

porating and adopting anew the provisions as to the qualifications required of a voter as set out in Article VI, freed of the indivisibility clause of the 1902 amendment. And the way was made clear for the General Assembly to act." 248 N.C., at 112, 102 S.E. 2d 860, 861.

In 1957 the Legislature rewrote General Statutes § 163-28 as we have noted.¹ Prior to that 1957 amendment § 163-28 perpetuated the grandfather clause contained in § 4 of Art. VI of the Constitution and § 163-32 established a procedure for registration to effectuate it.² But the 1957 amendment contained a provision that "All laws and clauses of laws in conflict with this Act are hereby repealed."³ The Federal three-judge court ruled that this 1957 amendment eliminated the grandfather clause from the statute. 152 F. Supp., at 296.

The Attorney General of North Carolina, in an *amicus* brief, agrees that the grandfather clause contained in Art. VI is in conflict with the Fifteenth Amendment. Appellee maintains that the North Carolina Supreme Court ruled that the invalidity of that part of Art. VI does not impair the remainder of Art. VI since the 1945 amendment to Art. VI freed it of its indivisibility clause. Under that view Art. VI would impose the same literacy test as that imposed by the 1957 statute and neither would be linked with the grandfather clause which, though present in print, is separable from the rest and void. We so read the opinion of the North Carolina Supreme Court.

Appellant argues that that is not the end of the problem presented by the grandfather clause. There is a provision in the General Statutes for permanent registration in some counties.⁴ Appellant points out that although the cut-off date in the grandfather clause was December 1, 1908, those who registered before then might still be voting. If they were allowed to vote without taking a literacy test and if appellant were denied the right to vote unless she passed it, members of the white race would receive preferential privileges of the ballot contrary to the command of the Fifteenth Amendment. That would be analogous to the problem posed in the classic case of *Yick Wo v. Hopkins*, 118 U.S. 356, where an ordinance unimpeachable on its face was applied in such a way as to violate the guarantee of equal protection contained in the Fourteenth Amendment. But this issue of discrimination in the actual operation of the ballot laws of North Carolina has not been framed in the issues presented for the state court litigation. Cf. *Williams v. Mississippi*, 170 U.S. 218, 225.⁵ So we do not reach it. But we mention it in passing so that it may be clear that nothing we say or do here will prejudice appellant in tendering that issue in the federal proceedings which await the termination of this state court litigation.

We come then to the question whether a State may consistently with the Fourteenth and Seventeenth Amendments apply a literacy test to all voters irrespective of race or color. The Court in *Guinn v. United States*, *supra*, at 366, disposed of the question in a few words, "No time need be spent on the question of the validity of the literacy test considered alone since as we have seen its establishment was but the exercise by the State of a lawful power vested in it not subject to our supervision, and indeed, its validity is admitted."

The States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised, *Pope v. Williams*,

¹ Note 1, *supra*.

² Section 163-32 provided:

"Every person claiming the benefit of section four of article six of the Constitution of North Carolina, as ratified at the general election on the second day of August, one thousand nine hundred, and who shall be entitled to register upon the permanent record for registration provided for under said section four, shall prior to December first, one thousand nine hundred and eight, apply for registration to the officer charged with the registration of voters as prescribed by law in each regular election to be held in the State for members of the General Assembly, and such persons shall take and subscribe before such officer an oath in the following form, viz.:

"I am a citizen of the United States and of the State of North Carolina; I am _____ years of age. I was, on the first day of January, A.D. one thousand eight hundred and sixty-seven, or prior to said date, entitled to vote under the constitution and laws of the state of _____ in which I then resided (or, I am a lineal descendant of _____ who was, on January one, one thousand eight hundred and sixty-seven, or prior to that date, entitled to vote under the constitution and laws of the state of _____ wherein he then resided."

³ N.C. Laws 1957, c. 287, pp. 277, 278.

⁴ Section 163-31.2 provides:

"In counties having one or more municipalities with a population in excess of 10,000 and in which a modern loose-leaf and visible registration system has been established as permitted by G.S. 163-43, with a full time registration as authorized by G.S. 163-31, such registration shall be a permanent public record of registration; and qualification to vote, and the same shall not thereafter be canceled and a new registration ordered, either by precinct or countywide, unless such registration has been lost or destroyed by theft, fire or other hazard."

193 U.S. 621, 633; *Mason v. Missouri*, 179 U.S. 328, 335, absent of course the discrimination which the Constitution condemns. Article I, § 2 of the Constitution in its provision for the election of members of the House of Representatives and the Seventeenth Amendment in its provision for the election of Senators provide that officials will be chosen "by the People." Each provision goes on to state that "the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature." So while the right of suffrage is established and guaranteed by the Constitution (*Ex parte Yarbrough*, 110 U.S. 651, 663-665; *Smith v. Allwright*, 321 U.S. 649, 661-662) it is subject to the imposition of state standards which are not discriminatory and which do not contravene any restriction that Congress, acting pursuant to its constitutional powers, has imposed. See *United States v. Classic*, 313 U.S. 299, 315. While § 2 of the Fourteenth Amendment, which provides for apportionment of Representatives among the States according to their respective numbers counting the whole number of persons in each State (except Indians not taxed), speaks of "the right to vote," the right protected "refers to the right to vote as established by the laws and constitution of the State." *McPherson v. Blacker*, 146 U.S. 1, 39.

We do not suggest that any standards which a State desires to adopt may be required of voters. But there is wide scope for exercise of its jurisdiction. Residence requirements, age, previous criminal record (*Davis v. Beason*, 133 U.S. 333, 345-347) are obvious examples indicating factors which a State may take into consideration in determining the qualifications of voters. The ability to read and write likewise has some relation to standards designed to promote intelligent use of the ballot. Literacy and illiteracy are neutral on race, creed, color, and sex, as reports around the world show.* Literacy and intelligence are obviously not synonymous. Illiterate people may be intelligent voters. Yet in our society where newspapers, periodicals, books, and other printed matter canvass and debate campaign issues, a State might conclude that only those who are literate should exercise the franchise. Cf. *Franklin v. Harper*, 205 Ga. 779, 55 S.E. 2d 221, appeal dismissed 339 U.S. 946. It was said last century in Massachusetts that a literacy test was designed to insure an "Independent and intelligent" exercise of the right of suffrage.[†] *Stone v. Smith*, 159 Mass. 413-414, 34 N.E. 521. North Carolina agrees. We do not sit in judgment on the wisdom of that policy. We cannot say, however, that it is not an allowable one measured by constitutional standards.

Of course a literacy test, fair on its face, may be employed to perpetuate that discrimination which the Fifteenth Amendment was designed to uproot. No

* World Illiteracy at Mid-Century, Unesco (1957).

† Nineteen States, including North Carolina, have some sort of literacy requirement as a prerequisite to eligibility for voting. Five require that the voter be able to read a section of the State or Federal Constitution and write his own name. Arizona Rev. Stat. § 16-101; Cal. Election Code § 220; Del. Code Ann., Tit. 15, § 1701; Me. Rev. Stat., c. 3, § 2; Mass. Gen. L. Ann., c. 51, § 1. Five require that the elector be able to read and write a section of the Federal or State Constitution. Ala. Code, 1940, Tit. 17, § 32; N.H. Rev. Stat. Ann. §§ 65:10-65:12; N.C. Gen. Stat. § 163-28; Okla. Stat. Ann., Tit. 26, § 81; S.C. Code § 28-62. Alabama also requires that the voter be of "good character" and "embrace the duties and obligations of citizenship" under the Federal and State Constitutions. Ala. Code, Tit. 17, § 32 (1956 Supp.).

Two States require that the voter be able to read and write English. N.Y. Election Code § 160; Ore. Rev. Stat. § 247.131. Wyoming (Wyo. Comp. Stat. Ann. § 31-113) and Connecticut (Conn. Gen. Stat. § 9-12) require that the voter read a constitutional provision in English, while Virginia (Va. Code § 24-88) requires that the voting application be written in the applicant's hand before the registrar and without aid, suggestion or memoranda. Washington (Wash. Rev. Code § 29.07.070) has the requirement that the voter be able to read and speak the English language.

Georgia requires that the voter read intelligibly and write legibly a section of the State or Federal Constitution. If he is physically unable to do so, he may qualify if he can give a reasonable interpretation of a section read to him. An alternative means of qualifying is provided: if one has good character and understands the duties and obligations of citizenship under a republican government, and he can answer correctly 20 of 30 questions listed in the statute (e.g., How does the Constitution of Georgia provide that a county site may be changed? what is treason against the State of Georgia? who are the solicitor general and the judge of the State Judicial Circuit in which you live?) he is eligible to vote. Geo. Code Ann. §§ 34-117, 34-120.

In Louisiana one qualifies if he can read and write English or his mother tongue, is of good character, and understands the duties and obligations of citizenship under a republican form of government. If he cannot read and write, he can qualify if he can give a reasonable interpretation of a section of the State or Federal Constitution when read to him, and if he is attached to the principles of the Federal and State Constitutions. La. Rev. Stat., Tit. 18, § 31.

In Mississippi the applicant must be able to read and write a section of the State Constitution and give a reasonable interpretation of it. He must also demonstrate to the registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government. Miss. Code Ann. § 8213.

such influence is charged here. On the other hand, a literacy test may be unconstitutional on its face. In *Davis v. Schnell*, 81 F. Supp. 872, aff'd 336 U.S. 683, the test was the citizen's ability to "understand and explain" an article of the Federal Constitution. The legislative setting of that provision and the great discretion it vested in the registrar made clear that a literacy requirement was merely a device to make racial discrimination easy. We cannot make the same inference here. The present requirement, applicable to members of all races, is that the prospective voter "be able to read and write any section of the Constitution of North Carolina in the English language." That seems to us to be the fair way of determining whether a person is literate, not a calculated scheme to lay springs for the citizen. Certainly we cannot condemn it on its face as a device unrelated to the desire of North Carolina to raise the standards for people of all races who cast the ballot.

Affirmed.

WILLIAMS v. MISSISSIPPI

170 U.S. 218

ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

No. 581. Argued and submitted March 18, 1898.—Decided April 25, 1898.

The provisions in section 241 of the constitution of Mississippi prescribing the qualifications for electors; in section 242, conferring upon the legislature power to enact laws to carry those provisions into effect; in section 244, making ability to read any section of the constitution, or to understand it when read, a necessary qualification to a legal voter; and of section 264, making it a necessary qualification for a grand or petit juror that he shall be able to read and write; and sections 2858, 3643 and 3644 of the Mississippi Code of 1892, with regard to elections, do not, on their face, discriminate between the white and negro races, and do not amount to a denial of the equal protection of the law, secured by the Fourteenth Amendment to the Constitution; and it has not been shown that their actual administration was evil, but only that evil was possible under them.

At June term 1896 of the Circuit Court of Washington County, Mississippi, the plaintiff in error was indicted by a grand jury composed entirely to white men for the crime of murder. On the 15th day of June he made a motion to quash the indictment, which was in substance as follows, omitting repetitions and retaining the language of the motion as nearly possible:

Now comes the defendant in this cause, Henry Williams by name, and moves the Circuit Court of Washington County, Mississippi, to quash the indictment herein filed and upon which it is proposed to try him for the alleged offence of murder: (1) Because the laws by which the grand jury was selected, organized, summoned and charged, which presented the said indictment, are unconstitutional and repugnant to the spirit and letter of the Constitution of the United States of America, Fourteenth Amendment thereof, in this, that the Constitution prescribes the qualifications of electors, and that to be a juror one must be an elector; that the Constitution also requires that those offering to vote shall produce to the election officers satisfactory evidence that they have paid their taxes; that the legislature is to provide means for enforcing the Constitution, and in the exercise of this authority enacted section 3643, also section 3644 of 1892, which respectively provide that the election commissioners shall appoint three election managers, and that the latter shall be judges of the qualifications of electors, and are required "to examine on oath any person duly registered and offering to vote touching his qualifications as an elector." And then the motion states that "the registration roll is not *prima facie* evidence of an elector's right to vote, but the list of those persons having been passed upon by the various district election managers of the county to compose the registration book of voters as named in section 2858 of said code of 1892, and that there was no registration books of voters prepared for the guidance of said officers of said county at the time said grand jury was drawn." It is further alleged that there is no statute of the State providing for the procurement of any registration books of voters of said county, and (it is alleged in detail) the terms of the constitution and the section of the code mentioned, and the discretion given to the officers, "is but a scheme on the part of the framers of that constitution to abridge the suffrage of the colored electors in the State of Mississippi on account of the previous condition of servitude by granting a discretion to the said officers as mentioned in the several sections of the constitution of the State and the statute of the State adopted under the said constitution, the use of said

discretion can be and has been used in the said Washington County to the end complained of." After some detail to the same effect, it is further alleged that the constitutional convention was composed of 134 members, only one of whom was a Negro; that under prior laws there were 100,000 colored voters and 60,000 white voters; the makers of the new constitution arbitrarily refused to submit it to the voters of the State for approval, but ordered it adopted, and an election to be held immediately under it, which election was held under the election ordinances of the said constitution in November 1891, and the legislature assembled in 1892 and enacted the statutes complained of, for the purpose to discriminate aforesaid, and but for that the "defendant's race would have been represented impartially on the grand jury which presented this indictment," and hence he is deprived of the equal protection of the laws of the State. It is further alleged that the State has not reduced its representation in Congress, and generally for the reasons aforesaid, and because the indictment should have been returned under the constitution of 1899 and statute of 1890 it is null and void. The motion concludes as follows: "Further, the defendant is a citizen of the United States, and for the many reasons herein named asks that the indictment be squashed, and he be recognized to appear at the next term of the court."

This motion was accompanied by four affidavits, subscribed and sworn to before the clerk of the court, on June 15, 1896, to wit:

1st. An affidavit of the defendant, "who, being duly sworn, deposes and says that the facts set forth in the foregoing motion are true to the best of his knowledge, of the language of the constitution and the statute of the State mentioned in said motion, and upon information and belief as to the other facts, and that the affiant verily believes the information to be reliable and true."

2d. Another affidavit of the defendant, "who, being first duly sworn, deposes and says: That he has heard the motion to squash the indictment herein read, and that he thoroughly understands the same, and that the facts therein stated are true, to the best of his knowledge and belief. As to the existence of the several sections of the state constitution, and the several sections of the state statute, mentioned in said motion to squash, further affiant states: That the facts stated in said motion, touching the manner and method peculiar to the said election, by which the delegates to said constitutional convention were elected, and the purpose for which said objectionable provisions were enacted, and the fact that the said desecration complained of as aforesaid has abridged the suffrage of the number mentioned therein, for the purpose named therein; all such material allegations are true, to the best of the affiant's knowledge and belief, and the fact of the race and color of the prisoner in this cause, and the race and color of the voters of the State whose elective franchise is abridged as alleged therein, and the fact that they who are discriminated against, as aforesaid, are citizens of the United States, and that prior to the adoption of the said constitution and said statute the said State was represented in Congress by seven Representatives in the lower House, and two Senators, and that since the adoption of the said objectionable laws there has been no reduction of said representation in Congress. All allegations herein, as stated in said motion aforesaid, are true to the best of affiant's knowledge and belief."

3d. An affidavit of John H. Dixon, "who, being duly sworn, deposes and says that he had heard the motion to squash the indictment filed in the *Henry Williams* case, and thoroughly understands the same, and that he has also heard the affidavit sworn to by said Henry Williams, carefully read to him, and thoroughly understands the same. And in the same manner the facts are sworn to in the said affidavit, and the same facts alleged therein upon information and belief, are hereby adopted as in all things the sworn allegations of affiant, and the facts alleged therein, as upon knowledge and belief, are made hereby the allegations of affiant upon his knowledge and belief."

4th. An affidavit of C. J. Jones, "who, being duly sworn, deposes and says that he has read carefully the affidavit filed in the *John Dixon* case sworn to by him (said C. J. Jones), and that he, said affiant, thoroughly understands the same, and adopts the said allegations therein as his deposition in this case upon hearing this motion to quash the indictment herein, and that said allegations are in all things correct and true as therein alleged."

The motion was denied and the defendant excepted. A motion was then made to remove the cause to the United States Circuit Court, based substantially on the same grounds as the motion to quash the indictment. This was also denied and an exception reserved.

The accused was tried by a jury composed entirely of white men and convicted. A motion for a new trial was denied, and the accused sentenced to be hanged. An appeal to the Supreme Court was taken and the judgment of the court below was affirmed.

The following are the assignments of error :

1. The trial court erred in denying motion to quash the indictment, and petition for removal.

2. The trial court erred in denying motion for new trial, and pronouncing death penalty under the verdict.

3. The Supreme Court erred in affirming the judgment of the trial court.

The sections of the constitution of Mississippi and the laws referred to in the motion of the plaintiff in error are printed in the margin.¹

¹ The three sections of article 12 of the constitution of the State of Mississippi above referred to read as follows :

Section 241. "Every male inhabitant of this State except idiots, insane persons and Indians not taxed, who is a citizen of the United States, twenty-one years old and upwards, who has resided in this State two years, and one year in the election district, or in the incorporated city or town in which he offers to vote, and who is duly registered as provided in this article, and who has never been convicted of bribery, burglary, theft, arson, obtaining money or goods under false pretenses, perjury, forgery, embezzlement or bigamy, and who has paid, on or before the 1st day of February of the year in which he shall offer to vote, all taxes which may have been legally required of him, and which he has had an opportunity of paying according to law for the two preceding years, and who shall produce to the officer holding the election satisfactory evidence that he has paid said taxes, is declared to be a qualified elector; but any minister of the Gospel in charge of an organized church shall be entitled to vote after six months' residence in the election district, if other wise qualified."

Section 242. "The legislature shall provide by law for the registration of all persons entitled to vote at any election, and all persons offering to register shall take the following oath or affirmation: 'I, _____, do solemnly swear (or affirm) that I am twenty-one years old (or I will be before the next election in this county) and that I will have resided in this State two years and _____ election district of _____ county for one year next preceding the ensuing election (or if it be stated in the oath that the person proposing to register is a minister of the Gospel in charge of an organized church, then it will be sufficient to aver therein two years' residence in the State and six months in said election district) and am now in good faith a resident of the same, and that I am not disqualified from voting by reason of having been convicted of any crime named in the constitution of this State as a disqualification to be an elector; that I will truly answer all questions propounded to me concerning my antecedents so far as they relate to my right to vote, and also as to my residence before my citizenship in this district; that I will faithfully support the Constitution of the United States and of the State of Mississippi, and will bear true faith and allegiance to the same. So help me God.' In registering voters in cities and towns not wholly in one election district the name of such city or town may be substituted in the oath for the election district. Any wilful and corrupt false statement in said affidavit, or in answer to any material question propounded as herein authorized shall be perjury."

Section 244. "On after the first day of January, A.D. 1892, every elector shall, in addition to the foregoing qualifications, be able to read any section of the constitution of this State; or he shall be able to understand the same when read to him, or give a reasonable interpretation thereof. A new registration shall be made before the next ensuing election after January the first, A.D. 1892."

Section 264 of article 14 of the constitution of the State of Mississippi, above referred to, reads as follows :

Section 264. "No person shall be a grand or petit juror unless a qualified elector and able to read and write; but the want of any such qualification in any juror shall not vitiate any indictment or verdict. The legislature shall provide by law for procuring a list of persons so qualified, and the drawing therefrom of grand and petit jurors for each term of the Circuit Court."

The three sections of the Code of 1892 of the State of Mississippi, above referred to, reads as follows :

Section 2358. How list of jurors procured.—"The board of supervisors at the first meeting in each year, or a subsequent meeting if not done at the first, shall select and make a list of persons to serve as jurors in the Circuit Court for the next two terms to be held more than thirty days afterwards, and as a guide in making the list, they shall use the registration books of voters; and it shall select and list the names of qualified persons of good intelligence, sound judgment and fair character, and shall take them as nearly as it conveniently can from the several election districts in proportion to the number of the qualified persons in each, excluding all who have served on the regular panel within two years, if there be not a deficiency of jurors."

Section 3643. Managers of election appointed.—"Prior to every election the commissioners of election shall appoint three persons for each election district to be managers of the election, who shall not all be of the same political party, if suitable persons of different political parties can be had in the district, and if any persons appointed shall fail to attend and serve, the managers present, if any, may designate one to fill his place, and if the commissioners of election fail to make the appointments, or in case of the failure of all those appointed to attend and serve, any three qualified electors present when the polls should be opened may act as managers."

Section 3644. Duties and powers of managers.—"The managers shall take care that the election is conducted fairly and agreeably to law, and they shall be judges of the qualifications of electors, and may examine on oath any person duly registered and offering to vote touching his qualifications as an elector, which oath any of the managers may administer."

Mr. *Cornelius J. Jones* for plaintiff in error.

Mr. *O. B. Mitchell*, for defendant in error, submitted on his brief.

Mr. JUSTICE McKENNA, after stating the case delivered the opinion of the court. The question presented is, are the provisions of the constitution of the State of Mississippi and the laws enacted to enforce the same repugnant to the Fourteenth Amendment of the Constitution of the United States? That amendment and its effect upon the rights of the colored race have been considered by this court in a number of cases, and it has been uniformly held that the Constitution of the United States, as amended, forbids, so far as civil and political rights are concerned, discriminations by the General Government, or by the States, against any citizen because of his race; but it has also been held, in a very recent case, to justify a removal from a state court to a Federal court of a cause in which such rights are alleged to be denied, that such denial must be the result of the constitution or laws of the State not of the administration of them. Nor can the conduct of a criminal trial in a state court be reviewed by this court unless the trial is had under some statute repugnant to the Constitution of the United States, or was so conducted as to deprive the accused of some right or immunity secured to him by that instrument. Upon this general subject this court in *Gibson v. Mississippi*, 162 U.S. 569, 581, after referring to previous cases, said: "But those cases were held to have also decided that the Fourteenth Amendment was broader than the provisions of section 641 of the Revised Statutes; that since that section authorized the removal of a criminal prosecution before trial, it did not embrace a case in which a right is denied by judicial action during a trial, or in the sentence, or in the mode of executing the sentence; that for such denials arising from judicial action after a trial commenced, the remedy lay in the revisory power of the higher courts of the State, and ultimately in the power of review which this court may exercise over their judgments whenever rights, privileges or immunities claimed under the Constitution or laws of the United States are withheld or violated; and that the denial or inability to enforce in the judicial tribunals of the State rights secured by any law providing for the equal civil rights of citizens of the United States to which section 641 refers and on account of which a criminal prosecution may be removed from a state court, is primarily, if not exclusively, a denial of such rights or an inability to enforce them resulting from the constitution or laws of the State rather than a denial first made manifest at or during the trial of the case."

It is not asserted by plaintiff in error that either the constitution of the State or its laws discriminate in terms against the negro race, either as to the elective franchise or the privilege or duty of sitting on juries. These results, if we under stand plaintiff in error, are alleged to be effected by the powers vested in certain administrative officers.

Plaintiff in error says:

"Section 241 of the constitution of 1890 prescribes the qualifications for electors; that residence in the State for two years, one year in the precinct of the applicant, must be effected; that he is twenty-one years or over of age, having paid all taxes legally due of him for two years prior to 1st day of February of the year he offers to vote. Not having been convicted of theft, arson, rape, receiving money or goods under false pretences, bigamy, embezzlement.

"Section 242 of the constitution provides the mode of registration. That the legislature shall provide by law for registration of all persons entitled to vote at any election, and that all persons offering to register shall take the oath; that they are not disqualified for voting by reason of any of the crimes named in the constitution of this State; that they will truly answer all questions propounded to them concerning their antecedents so far as they relate to the applicant's right to vote, and also as to their residence before their citizenship in the district in which such application for registration is made. The court readily sees the scheme. If the applicant swears, as he must do, that he is not disqualified by reason of the crimes specified, and that he has effected the required residence, what right has he to answer all questions as to his former residence? Section 244 of the constitution requires that the applicant for registration after January, 1892, shall be able to read any section of the constitution, or he shall be able to understand the same (being any section of the organic law), or give a reasonable interpretation thereof. Now we submit that these provisions vest in the administrative officers the full power, under section 242, to ask all sorts of vain, impertinent questions, and it is with that officer to say whether the questions relate to the applicant's right to vote; this officer can reject whomever he chooses, and register whomever he chooses; for he is vested by the con-

stitution with that power. Under section 244 it is left with the administrative officer to determine whether the applicant reads, understands or interprets the section of the constitution designated. The officer is the sole judge of the examination of the applicant, and even though the applicant be qualified, it is left with the officer to so determine; and the said officer can refuse him registration."

To make the possible dereliction of the officers the dereliction of the constitution and laws, the remarks of the Supreme Court of the State are quoted by plaintiff in error as to their intent. The constitution provides for the payment of a poll tax, and by a section of the code its payment cannot be compelled by a seizure and sale of property. We gather from the brief of counsel that its payment is a condition of the right to vote, and in a case to test whether its payment was or was not optional, *Ratoliff v. Beale*, 20 So. Rep. 885, the Supreme Court of the State said: "Within the field of permissible action under the limitations imposed by the Federal Constitution, the convention swept the field of expedients, to obstruct the exercise of suffrage by the negro race." And further the court said, speaking of the negro race: "By reason of its previous condition of servitude and dependencies, this race had acquired or accentuated certain peculiarities of habit, of temperament, and of character, which clearly distinguished it as a race from the whites. A patient, docile people; but careless, landless, migratory within narrow limits, without forethought; and its criminal members given to furtive offences, rather than the robust crimes of the whites. Restrained by the Federal Constitution from discriminating against the negro race, the convention discriminates against its characteristics, and the offences to which its criminal members are prone." But nothing tangible can be deduced from this. If weakness were to be taken advantage of, it was to be done "within the field of permissible action under the limitations imposed by the Federal Constitution," and the means of it were the alleged characteristics of the negro race, not the administration of the law by officers of the State. Besides, the operation of the constitution and laws is not limited by their language or effects to one race. They reach weak and vicious white men as well as weak and vicious black men, and whatever is sinister in their intention, if anything, can be prevented both races by the exertion of that duty which voluntarily pays taxes and refrains from crime.

It cannot be said, therefore, that the denial of the equal protection of the laws arises primarily from the constitution and laws of Mississippi, nor is there any sufficient allegation of an evil and discriminating administration of them. The only allegation is "... by granting a discretion to the said officers, as mentioned in the several sections of the constitution of the State, and the statute of the State adopted under the said constitution, the use of which discretion can be and has been used by said officers in the said Washington County to the end here complained of, to wit, the abridgment of the elective franchise of the colored voters of Washington County, that such citizens are denied the right to be selected as jurors to serve in the Circuit Court of the county, and that this denial to them of the right to equal protection and benefits of the laws of the State of Mississippi on account of their color and race, resulting from the exercise of the discretion partial to the white citizens, is in accordance with and the purpose and intent of the framers of the present constitution of said State. . . ."

It will be observed that there is nothing direct and definite in this allegation either as to means or time as affecting the proceedings against the accused. There is no charge against the officers to whom is submitted the selection of grand or petit jurors, or those who procure the lists of the jurors. There is an allegation of the purpose of the convention to disfranchise citizens of the colored race, but with this we have no concern, unless the purpose is executed by the constitution or laws or by those who administer them. If it is done in the latter way, how or by what means should be shown. We gather from the statements of the motion that certain officers are invested with discretion in making up lists of electors, and that this discretion can be and has been exercised against the colored race, and from these lists jurors are selected. The Supreme Court of Mississippi, however, decided, in a case presenting the same questions as the one at bar, "that jurors are not selected from or with reference to any lists furnished by such election officers." *Dixon v. The State*, Nov. 9, 1896, 20 So. Rep. 889.

We do not think that this case is brought within the ruling in *Yick Wo v. Hopkins*, 118 U. S. 356. In that case the ordinances passed on discriminated against laundries conducted in wooden buildings. For the conduct of these the consent of the board of supervisors was required, and not for the conduct of laundries in brick or stone buildings. It was admitted that there were about 320

laundries in the city and county of San Francisco, of which 240 were owned and conducted by subjects of China, and of the whole number 310 were constructed of wood, the same material that constitutes nine tenths of the houses of the city, and that the capital invested was not less than two hundred thousand dollars. "It was alleged that 150 Chinamen were arrested, and not one of the persons who were conducting the other eighty laundries and who were not Chinamen. It was also admitted "that petitioner and 200 of his countrymen similarly situated petitioned the board of supervisors for permission to continue their business in the various houses which they had been occupying and using for laundries for more than twenty years, and such petitions were denied, and all the petitions of those who were not Chinese, with one exception of Mrs. Mary Meagles, were granted."

The ordinances were attacked as being void on their face, and as being within the prohibition of the Fourteenth Amendment, but even if not so, that they were void by reason of their administration. Both contentions were sustained.

Mr. Justice Matthews said that the ordinance drawn in question "does not describe a rule and conditions for the regulation of the use of property for laundry purposes, to which all similarly situated may conform. It allows without restriction the use for such purposes of buildings of brick or stone; but as to wooden buildings, constituting all those in previous use, divides the owners or occupiers into two classes, not having respect to their personal character and qualifications for the business, nor the situation and nature and adaptation of the buildings themselves, but merely by an arbitrary line, on one side of which are those who are permitted to pursue their industry by the mere will and consent of the supervisors, and on the other those from whom that consent is withheld, at their mere will and pleasure." The ordinances, therefore, were on their face repugnant to the Fourteenth Amendment. The court, however, went further and said: "This conclusion and the reasoning on which it is based are deductions from the face of the ordinance, as to its necessary tendency and ultimate actual operation. In the present cases we are not obliged to reason from the probable to the actual, and pass upon the validity of the ordinances complained of as tried merely by the opportunities which their terms afford of unequal and unjust discrimination in their administration. For the cases present the ordinances in actual operation, and the facts shown establish an administration directed so exclusively against a particular class of persons as to warrant and require the conclusion that whatever may have been the intent of the ordinances as adopted, they are applied by the public authorities charged with their administration, and thus representing the State itself, with a mind so unequal and oppressive as to amount to a practical denial by the State of that equal protection of the laws which is secured to the petitioners, as to all other persons, by the broad and benign provisions of the Fourteenth Amendment to the Constitution of the United States. Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution. This principle of interpretation has been sanctioned in *Yenderson v. Mayor of New York*, 92 U. S. 259; *Oh Y Lung v. Freeman*, 92 U. S. 275; *Ex parte Virginia*, 100 U. S. 339; *Neal v. Delaware*, 103 U. S. 370; and *Soon Hing v. Crowley*, 113 U. S. 703."

This comment is not applicable to the constitution of Mississippi and its statutes. They do not on their face discriminate between the races, and it has not been shown that their actual administration was evil, only that evil was possible under them.

It follows, therefore, that the judgment must be

Affirmed.

GUINN AND BEAL v. UNITED STATES

238 U. S. 347

CERTIFICATE FROM THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 96. Signed October 17, 1963—Decided June 21, 1915.

The so-called Grandfather Clause of the amendment to the constitution of Oklahoma of 1910 is void because it violates the Fifteenth Amendment to the Constitution of the United States.

The Grandfather Clause being unconstitutional and not being separable from the remainder of the amendment to the constitution of Oklahoma of 1910, that amendment as a whole is invalid.

The Fifteenth Amendment does not, in a general sense, take from the States the power over suffrage possessed by the States from the beginning, but it does restrict the power of the United States or the States to abridge or deny the right of a citizen of the United States to vote on account of race, color or previous condition of servitude.

While the Fifteenth Amendment gives no right of suffrage, as its command is self-executing, rights of suffrage may be enjoyed by reason of the striking out of discriminations against the exercise of the right.

A provision in a state constitution recurring to conditions existing before the adoption of the Fifteenth Amendment and the continuance of which conditions that amendment prohibited, and making those conditions the test of the right to the suffrage is in conflict with, and void under, the Fifteenth Amendment.

The establishment of a literacy test for exercising the suffrage is an exercise by the State of a lawful power vested in it not subject to the supervision of the Federal courts.

Whether a provision in a suffrage statute may be valid under the Federal Constitution, if it is so connected with other provisions that are invalid, as to make the whole statute unconstitutional, is a question of state law, but in the absence of any decision by the state court, this court may, in a case coming from the Federal courts, determine it for itself.

The suffrage and literacy tests in the amendment of 1910 to the constitution of Oklahoma are so connected with each other that the unconstitutionality of the former renders the whole amendment invalid.

The facts, which involve the constitutionality under the Fifteenth Amendment of the Constitution of the United States of the suffrage amendment to the constitution of Oklahoma, known as the Grandfather Clause, and the responsibility of election officers under § 5508, Rev. Stat., and § 19 of the Penal Code for preventing people from voting who have the right to vote, are stated in the opinion.

Mr. Joseph W. Bailey, with whom Mr. C. B. Stuart, Mr. A. C. Cruce, Mr. W. A. Leabetter, Mr. Norman Haskell and Mr. O. G. Hornor were on the brief, for plaintiffs in error:

Determination of the constitutionality of the Grandfather Clause in the Oklahoma constitution, not being necessary to a full solution of this case, the court will not pass upon the constitutionality of such provision. *Atwater v. Hassett*, 111 Pac. Rep. 802; *Bishop on Stat. Crime*, §§ 805-806; *Branton County v. West Virginia*, 208 U.S. 192; *Burns v. State*, 12 Wisconsin, 619; *Devard v. Hoffman*, 18 Maryland, 479; *Liverpool Co. v. Immigration Commissioners* 113 U.S. 39; *Mo., Kans. & Tex. Ry. v. Ferris*, 179 U.S. 606; §§ 19, 20, Penal Code; § 5508, Rev. Stats. (§ 19, Penal Code); *Smith v. Indiana*, 191 U.S. 189; *Cruce v. Cease*, 114 Pac. Rep. 251; *New Orleans Canal Co. v. Heard*, 47 La. Ann. 1679.

As to the nature of suffrage, see Jameson on Const. Conventions, § 336.

Suffrage in the States of the American Union is not controlled or affected by the Fourteenth Amendment to the Constitution of the United States. *Blaine's Twenty Years in Congress*; *Brannon's Fourteenth Amendment*, 77; *Coffield v. Coryell*, 4 Wash. C. C. 371; *Miller's Lectures on Const.*, 681; *Minor v. Happersett* 21 Wall. 162; *Slaughter House Cases*, 16 Wall. 36; *Strauder v. West Virginia*, 100 U.S. 303; 1 Willoughby's Constitution, 534; 2 *Id.* 483; 5 Woodrow Wilson's Hist. Am. People.

The Grandfather Clause does not violate the Fifteenth Amendment to the Constitution of the United States. *Atwater v. Hassett*, 111 Pac. Rep. 802; *Dred Scott Case*, 19 How. 393; *Dodge v. Woolley*, 18 How. 371; *Fairbanks v. United States*, 181 U.S. 286; *Fletcher v. Peck*, 6 Cranch, 87; *Mills v. Green*, 67 Fed. Rep. 818; *Mills v. Green*, 69 Fed. Rep. 852; *Mitchell v. Lippencott*, 2 Woods, 372; *McClure v. Owen*, 26 Iowa, 253; *McCreary v. United States*, 195 U.S. 27; *Pope v. Williams*, 193, U.S. 621; *Southern R.R. v. Orton*, 6 Sawyer, 82 Fed. Rep. 478; *State v. Grand Trunk R.R.*, 3 Fed. Rep. 889; *Stimson's Fed. & State Const.*, 224; *United States v. Reece*, 92 U.S. 214; *United States v. Orlickshank*, 92 U.S. 542; *United States v. Anthony*, 11 Blatchf. 205; *United States v. Des Moines*, 142 U.S. 545; *Webster v. Cooper*, 14 How. 488; *Williams v. Mississippi*, 170 U.S. 214; *Yick Wo v. Hopkins*, 118 U.S. 356.

Even though the exemption privilege provided in the Grandfather Law may be invalid, yet the body of the law may be permitted to stand. *Albany v. Stanley*, 105 U.S. 305; *Trade Mark Cases*, 100 U.S. 82; *Little Rock & Ry. v. Worthen*, 120 U.S. 97.

The exception does not deny or abridge the right to vote on account of race, color, or previous condition of servitude.

The purpose and motive which moved the legislature to submit and the people to adopt the amendment are not subject to judicial inquiry.

The exception which is challenged as violating the entire amendment, even if open to judicial inquiry, is valid, because it applies without distinction of race, color, or previous condition of servitude.

In support of these contentions, see *Bailey v. Alabama*, 219 U.S. 219; *Cruce v. Cease*, 28 Oklahoma, 271; *Home Ins. Co. v. New York*, 134 U.S. 504; *McGray v. United States*, 198 U.S. 27; *Ratchffe v. Beal*, 20 So. Rep. 865; *Smith v. Indiana*, 191 U.S. 133; *Soon Hing v. Crowley*, 113 U.S. 703; *United States v. Reese*, 92 U.S. 214; *Williams v. Mississippi*, 170 U.S. 213; *Yick Wo v. Hopkins*, 118 U.S. 358.

Mr. Solicitor General Davis for the United States:

The questions propounded by the Circuit Court of Appeals are raised by the facts as certified and are indispensable to a determination of the cause.

The answer to the second question propounded by the court, is that the Grandfather Clause of the amendment to the constitution of Oklahoma of the year 1910 is void because it violates the Fifteenth Amendment.

The so-called Grandfather Clause incorporates by reference the laws of those States which in terms excluded negroes from the franchise on January 1, 1866, because of race, color, or condition of servitude, and so itself impliedly excludes them for the same reason.

The doctrine of incorporation by reference has been frequently enunciated and applied. *Bank for Savings v. Collector*, 3 Wall. 495; *Donnelly v. United States*, 228 U.S. 243; *Ex parte Crow Dog*, 109 U.S. 556; *In re Heath*, 144 U.S. 92; *In re Hohorst*, 150 U.S. 653; *United States v. Le Bris*, 121 U.S. 278; *Viterbo v. Friedlander*, 120 U.S. 707. See also; *Endlich*, Interp. Stats., § 492; *Potter's Dwarrris*, pp. 190-192, 218; *Sutherland*, Statutes, 2d ed., § 405.

What is implied in a statute is as much a part of it as what is expressed. *Gelpoke v. Dubuque*, 1 Wall. 175, 220; *United States v. Babbitt*, 1 Black, 55, 61; *Wilson County v. Third Nat. Bank*, 103 U.S. 770, 778.

Whether at a given time a man was entitled to vote is a mixed question of law and fact, to be resolved only by consulting the law fixing the qualifications for suffrage and then the facts as to his possession of those qualifications.

While the Fifteenth Amendment did not confer the right of suffrage upon anyone, it did confer upon citizens of the United States from and after the date of its ratification the right not to be discriminated against in the exercise of the elective franchise on account of race, color, or previous condition of servitude. *United States v. Reese*, 92 U.S. 214; *United States v. Cruikshank*, 92 U.S. 542.

In all cases where the former slave-holding States had not removed from their constitutions the word "white" as a qualification for voting, the Fifteenth Amendment did in effect confer upon the negro the right to vote, because, being paramount to the state law, it annulled the discriminating word "white" and thus left him in the enjoyment of the same right as white persons. *Ex parte Yarbrough*, 110 U.S. 651; *Neal v. Delaware*, 103 U.S. 370.

If, therefore, the date fixed in the Grandfather Clause had been the year 1871—after the adoption of the Fifteenth Amendment—instead of the year 1866, the constitutions and laws to which it referred, and which were by such reference made a part of it, would have been already purged of the vice of racial discrimination, and the amendment itself would have been likewise free from it. To reflect upon the change which would be wrought in the meaning of this Grandfather Clause by the substitution of the year 1871 for the year 1866 is to be confirmed in the conviction of its utter invalidity.

The necessary effect and operation of the Grandfather Clause is to exclude practically all illiterate negroes and practically no illiterate white men, and from this its unconstitutional purpose may legitimately be inferred.

The census statistics show that the proportion of negroes qualified under the test imposed by the Grandfather Clause is as inconsiderable as the proportion of whites thereby disqualified.

In practical operation the amendment inevitably discriminates between the class of illiterate whites and illiterate blacks as a class, to the overwhelming disadvantage of the latter.

The necessary effect and operation of a state statute or constitutional amendment may be considered in determining its validity under the Federal Constitution. *Bailey v. Alabama*, 219 U.S. 219; *Ho Ah Kow v. Nunan*, 5 Sawyer, 552; *Home Insurance Co. v. New York*, 134 U.S. 504, 508; *Yick Wo v. Hopkins*, 118 U.S. 358. See also: *Brimmer v. Redman*, 138 U.S. 78, 82; *Chy Lung v. Freeman*, 92 U.S. 275, 278; *Dobbins v. Los Angeles*, 195 U.S. 223, 240; *Henderson v. Mayor of N. Y.*, 92 U.S. 259., 268; *Lochner v. New York*, 198 U.S. 45, 64; *McGray v. United States*, 195 U.S. 27, 60. See also: *Macwell v. Dow*, 176 U.S. 581; *Minne-*

Sota v. Barber, 136 U.S. 813, 819; *Missouri v. Lewis*, 101 U.S. 22, 32; *Quong Wing v. Kirkendall*, 223 U.S. 59, 68. Distinguishing — *Barber v. Connolly*, 113 U.S. 27; *Soon Hing v. Cowley*, 113 U.S. 703; and *Williams v. Mississippi*, 170 U.S. 218.

The answer to the first question propounded by the court is that the Grandfather Clause being in violation of the Fifteenth Amendment and void, the amendment of 1910 to the constitution of Oklahoma as a whole is likewise invalid. The unconstitutional portion of the amendment is not separable from the remainder. *Connolly v. Union Sewer Pipe Co.*, 184 U.S. 540, 564-565; *Reagan v. Farmers' Loan & Trust Co.*, 154 U.S. 362, 395.

The first question certified by the Circuit Court of Appeals should be answered in the negative; the second question in the affirmative.

Mr. Moorfield Storey for the National Association for the Advancement of Colored People:

All discriminations respecting the right to vote on account of color are unconstitutional.

Whether the Oklahoma amendment constitutes such a discrimination is to be determined by its purpose and effect, and not by its phraseology alone.

The undoubted purpose and effect of the amendment is to discriminate against colored voters. *Anderson v. Myers*, 182 Fed. Rep. 223; *Bailey v. Alabama*, 219 U.S. 219; *Brimmer v. Rehman*, 138 U.S. 78; *Collins v. New Hampshire*, 171 U.S. 80; *Ohj Lung v. Freeman*, 92 U.S. 275; *Galveston do. Ry. v. Texas*, 210 U.S. 217; *Giles v. Harris*, 189 U.S. 475; *Giles v. Teasley*, 198 U.S. 146; *Graver v. Faurol*, 162 U.S. 435; *Hannibal & St. Jo. R.R. v. Husen*, 95 U.S. 465; *Henderson v. Mayor of New York*, 92 U.S. 259; *Lochner v. New York*, 198 U.S. 45; *Maynard v. Hecht*, 151 U.S. 324; *Minnesota v. Barber*, 186 U.S. 313; *Mobile v. Watson*, 116 U.S. 289; *New Hampshire v. Louisiana*, 108 U.S. 76; *People v. Albertson*, 55 N.Y. 50; *People v. Compagnie Générale*, 107 U.S. 59; *Postal Tele-Cable v. Taylor*, 192 U.S. 84; *Schollenberger v. Pennsylvania*, 171 U.S. 1; *Scott v. Donald*, 165 U.S. 58; *Smith v. St. Louis & Co. W. Ry.*, 181 U.S. 248; *State v. Jones*, 96 Ohio St. 453; *Strander v. West Virginia*, 100 U.S. 303; *Voight v. Wright*, 141 U.S. 62; *Williams v. Mississippi*, 170 U.S. 218; *Ex parte Yarbrough*, 110 U.S. 651.

Mr. J. H. Adams filed a brief as *amicus curiae*.

Mr. John H. Budford and *Mr. John Embry* filed a brief as *abici curiae*.

MR. CHIEF JUSTICE WHITE delivered the opinion of the court.

This case is before us on a certificate drawn by the court below as the basis of two questions which are submitted for our solution in order to enable the court correctly to decide issues in a case which it has under consideration. Those issues arose from an indictment and conviction of certain election officers of the State of Oklahoma (the plaintiffs in error) of the crime of having conspired unlawfully, wilfully and fraudulently to deprive certain negro citizens, on account of their race and color, of a right to vote at a general election held in that State in 1910, they being entitled to vote under the state law and which right was secured to them by the Fifteenth Amendment to the Constitution of the United States. The prosecution was directly concerned with § 5508, Rev. Stat., now § 19 of the Penal Code which is as follows:

"If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than five thousand dollars and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States."

We concentrate and state from the certificate only matters which we deem essential to dispose of the questions asked.

Suffrage in Oklahoma was regulated by § 1, Article III of the Constitution under which the State was admitted into the Union. Shortly after the admission there was submitted an amendment to the Constitution making a radical change in that article which was adopted prior to November 8, 1910. At an election for members of Congress which followed the adoption of this Amendment certain election officers in enforcing its provisions refused to allow certain negro citizens to vote who were clearly entitled to vote under the provision of the Constitution under which the State was admitted, that is, before the amendment, and who, it is equally clear, were not entitled to vote under the provision

of the suffrage amendment if that amendment governed. The persons so excluded based their claim of right to vote upon the original Constitution and upon the assertion that the suffrage amendment was void because in conflict with the prohibitions of the Fifteenth Amendment and therefore afforded no basis for denying them the right guaranteed and protected by that Amendment. And upon the assumption that this claim was justified and that the election officers had violated the Fifteenth Amendment in denying the right to vote, this prosecution, as we have said, was commenced. At the trial the court instructed that by the Fifteenth Amendment the States were prohibited from discriminating as to suffrage because of race, color, or previous condition of servitude and that Congress in pursuance of the authority which was conferred upon it by the very terms of the Amendment to enforce its provisions had enacted the following (Rev. Stat., § 2004) :

"All citizens of the United States who are otherwise qualified by law to vote at any election by the people of any State, Territory, district, . . . municipality, . . . or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude, any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding."

It then instructed as follows:

"The State amendment, which imposes the test of reading and writing any section of the State constitution as a condition to voting to persons not on or prior to January 1, 1866, entitled to vote under some form of government, or then resident in some foreign nation, or a lineal descendant of such person, is not valid, but you may consider it in so far as it was in good faith relied and acted upon by the defendants in ascertaining their intent and motive. If you believe from the evidence that the defendants formed a common design and cooperated in denying the colored voters of Union Township precinct, or any of them, entitled to vote, the privilege of voting, but this was due to a mistaken belief sincerely entertained by the defendants as to the qualifications of the voters—that is, if the motive actuating the defendants was honest, and they simply erred in the conception of their duty—then the criminal intent requisite to their guilt is wanting and they cannot be convicted. On the other hand, if they knew or believed these colored persons were entitled to vote, and their purpose was to unfairly and fraudulently deny the right of suffrage to them, or any of them entitled thereto, on account of their race and color, then their purpose was a corrupt one, and they cannot be shielded by their official positions."

The questions which the court below asks are these:

"1. Was the amendment to the constitution of Oklahoma, heretofore set forth, valid?

"2. Was that amendment void in so far as it attempted to debar from the right or privilege of voting for a qualified candidate for a Member of Congress in Oklahoma, unless they were able to read and write any section of the constitution of Oklahoma, negro citizens of the United States who were otherwise qualified to vote for a qualified candidate for a Member of Congress in that State, but who were not, and none of whose lineal ancestors was, entitled to vote under any form of government on January 1, 1866, or at any time prior thereto, because they were then slaves?"

As these questions obviously relate to the provisions concerning suffrage in the original constitution and the amendment to those provisions which forms the basis of the controversy, we state the text of both. The original clause so far as material was this:

"The qualified electors of the State shall be male citizens of the United States, male citizens of the State, and male persons of Indian descent native of the United States, who are over the age of twenty-one years, who have resided in the State one year, in the county six months, and in the election precinct thirty days, next preceding the election at which any such elector offers to vote."

And this is the amendment:

"No person shall be registered as an elector of this State or be allowed to vote in any election herein, unless he be able to read and write any section of the constitution of the State of Oklahoma; but no person who was, on January 1, 1866, or at any time prior thereto, entitled to vote under any form of government, or who at that time resided in some foreign nation, and no lineal descendant of such person, shall be denied the right to register and vote."

because of his inability to so read and write sections of such constitution. Precinct election inspectors having in charge the registration of electors shall enforce the provisions of this section at the time of registration, provided registration be required. Should registration be dispensed with, the provisions of this section shall be enforced by the precinct election officer when electors apply for ballots to vote."

Considering the questions in the light of the text of the suffrage amendment it is apparent that they are twofold because of the twofold character of the provisions as to suffrage which the amendment contains. The first question is concerned with that provision of the amendment which fixes a standard by which the right to vote is given upon conditions existing on January 1, 1866, and relieves those coming within that standard from the standard based on a literacy test which is established by the other provision of the amendment. The second question asks as to the validity of the literacy test and how far, if intrinsically valid, it would continue to exist and be operative in the event the standard based upon January 1, 1866, should be held to be illegal as violative of the Fifteenth Amendment.

To avoid that which is unnecessary let us at once consider and sift the propositions of the United States on the one hand and of the plaintiffs in error on the other, in order to reach with precision the real and final question to be considered. The United States insists that the provision of the amendment which fixes a standard based upon January 1, 1866, is repugnant to the prohibitions of the Fifteenth Amendment because in substance and effect that provision, if not an express, is certainly an open repudiation of the Fifteenth Amendment and hence the provision in question was stricken with nullity in its inception by the self-operative force of the Amendment, and as the result of the same power was at all subsequent times devoid of any vitality whatever.

For the plaintiffs in error on the other hand it is said the States have the power to fix standards for suffrage and that power was not taken away by the Fifteenth Amendment but only limited to the extent of the prohibitions which that Amendment established. This being true, as the standard fixed does not in terms make any discrimination on account of race, color, or previous condition of servitude, since all, whether negro or white, who come within its requirements enjoy the privilege of voting, there is no ground upon which to rest the contention that the provision violates the Fifteenth Amendment. This, it is insisted, must be the case unless it is intended to expressly deny the State's right to provide a standard for suffrage, or what is equivalent thereto, to assert: a, that the judgment of the State exercised in the exertion of that power is subject to Federal judicial review or supervision, or b, that it may be questioned and be brought within the prohibitions of the Amendment by attributing to the legislative authority an occult motive to violate the Amendment or by assuming that an exercise of the otherwise lawful power may be invalidated because of conclusions concerning its operation in practical execution and resulting discrimination arising therefrom, albeit such discrimination was not expressed in the standard fixed or fairly to be implied but simply arose from inequalities naturally inhering in those who must come within the standard in order to enjoy the right to vote.

On the other hand the United States denies the relevancy of these contentions. It says State power to provide for suffrage is not disputed, although, of course, the authority of the Fifteenth Amendment and the limit on that power which it imposes is insisted upon. Hence, no assertion denying the right of a State to exert judgment and discretion in fixing the qualification of suffrage is advanced and no right to question the motive of the State in establishing a standard as to such subjects under such circumstances or to review or supervise the same is relied upon and no power to destroy an otherwise valid exertion of authority upon the mere ultimate operation of the power exercised is asserted. And applying these principles to the very case in hand the argument of the Government in substance says: No question is raised by the Government concerning the validity of the literacy test provided for in the amendment under consideration as an independent standard since the conclusion is plain that that test rests on the exercise of State judgment and therefore cannot be here assailed either by disregarding the State's power to judge on the subject or by testing its motive in enacting the provision. The real question involved, so the argument of the Government insists, is the repugnancy of the standard which the amendment makes, based upon the conditions existing on January 1, 1866, because on its face and inherently considering the substance

of things, that standard is a mere denial of the restrictions imposed by the prohibitions of the Fifteenth Amendment and by necessary result re-creates and perpetuates the very conditions which the amendment was intended to destroy. From this it is urged that no legitimate discretion could have entered into the fixing of such standard which involved only the determination to directly act at naught or by indirection avoid the commands of the amendment. And it is insisted that nothing contrary to these propositions is involved in the contention of the Government that if the standard which the suffrage amendment fixes based upon the conditions existing on January 1, 1866, be found to be void for the reasons urged, the other and literacy test is also void, since that contention rests, not upon any assertion on the part of the Government of any abstract repugnancy of the literacy test to the prohibitions of the Fifteenth amendment, but upon the relation between that test and the other as formulated in the suffrage amendment and the inevitable result which it is deemed must follow from holding it to be void if the other is so declared to be.

Looking comprehensively at these contentions of the parties it plainly results that the conflict between them is much narrower than it would seem to be because the premise which the arguments of the plaintiffs in error attribute to the propositions of the United States is by it denied. On the very face of things it is clear that the United States disclaims the gloss put upon its contentions by limiting them to the propositions which we have hitherto pointed out, since it rests the contentions which it makes as to the assailed provision of the suffrage amendment solely upon the ground that it involves an unmistakable, although it may be a somewhat disguised refusal, to give effect to the prohibitions of the Fifteenth Amendment by creating a standard which it is repeated but calls to life the very conditions which that amendment was adopted to destroy and which it had destroyed.

The questions then are: (1) Giving to the propositions of the Government the interpretation which the Government puts upon them and assuming that the suffrage provision has the significance which the Government assumes it to have, is that provision as a matter of law repugnant to the Fifteenth Amendment? which leads us of course to consider the operation and effect of the Fifteenth Amendment. (2) If yes, has the assailed amendment in so far as it fixes a standard for voting as of January 1, 1866, the meaning which the Government attributes to it? which leads us to analyze and interpret that provision of the amendment. (3) If the investigation as to the two prior subjects establishes that the standard fixed as of January 1, 1866, is void, what if any effect does that conclusion have upon the literacy standard otherwise established by the amendment? which involves determining whether that standard, if legal, may survive the recognition of the fact that the other or 1866 standard has not and never had any legal existence. Let us consider these subject under separate headings.

1. *The operation and effect of the Fifteenth Amendment.* This is its text:

"Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

"Section 2. The Congress shall have power to enforce this article by appropriate legislation."

(a) Beyond doubt the Amendment does not take away from the State governments in a general sense the power over suffrage which has belonged to those governments from the beginning and without the possession of which power the whole fabric upon which the division of State and national authority under the Constitution and the organization of both governments rest would be without support and both the authority of the nation and the State would fall to the ground. In fact, the very command of the Amendment recognizes the possession of the general power by the State, since the Amendment seeks to regulate its exercise as to the particular subject with which it deals.

(b) But it is equally beyond the possibility of question that the Amendment in express terms restricts the power of the United States or the States to abridge or deny the right of a citizen of the United States to vote on account of race, color or previous condition of servitude. The restriction is coincident with the power and prevents its exertion in disregard of the command of the Amendment. But while this is true, it is true also that the Amendment does not change, modify or deprive the States of their full power as to suffrage except of course as to the subject with which the Amendment deals and to the extent that obedience to its command is necessary. Thus the authority over suffrage which the States possess and the limitation which the Amendment

impres are coordinate and one may not destroy the other without bringing about the destruction of both.

(c) While in the true sense, therefore, the Amendment gives no right of suffrage, it was long ago recognized that in operation its prohibition might measurably have that effect; that is to say, that as the command of the Amendment was self-executing and reached without legislative action the conditions of discrimination against which it was aimed, the result might arise that as a consequence of the striking down of a discriminating clause a right of suffrage would be enjoyed by reason of the generic character of the provision which would remain after the discrimination was stricken out. *Ex parte Yarbrough*, 110 U.S. 651; *Neal v. Delaware*, 103 U.S. 370. A familiar illustration of this doctrine resulted from the effect of the adoption of the Amendment on state constitutions in which at the time of the adoption of the Amendment the right of suffrage was conferred on all white male citizens, since by the inherent power of the Amendment the word white disappeared and therefore all male citizens without discrimination on account of race, color or previous condition of servitude came under the generic grant of suffrage made by the State.

With these principles before us how can there be room for any serious dispute concerning the repugnancy of the standards based upon January 1, 1866 (a date which preceded the adoption of the Fifteenth Amendment), if the suffrage provision fixing that standard is susceptible of the significance which the Government attributes to it? Indeed, there seems no escape from the conclusion that to hold that there was even possibility for dispute on the subject would be but to declare that the Fifteenth Amendment not only had not the self-executing power which it has been recognized to have from the beginning, but that its provisions were wholly inoperative because susceptible of being rendered inapplicable by mere forms of expression embodying no exercise of judgment and resting upon no discernible reason other than the purpose to disregard the prohibitions of the Amendment by creating a standard of voting which on its face was in substance but a revitalization of conditions which when they prevailed in the past had been destroyed by the self-operative force of the Amendment.

2. *The standard of January 1, 1866, fixed in the suffrage amendment and its significance.*

The inquiry of course here is, Does the amendment as to the particular standard which this heading embraces involve the mere refusal to comply with the commands of the Fifteenth Amendment as previously stated? This leads us for the purpose of the analysis to recur to the text of the suffrage amendment. Its opening sentence fixes the literacy standard which is all-inclusive since it is general in its expression and contains no word of discrimination on account of race or color or any other reason. This however is immediately followed by the provisions creating the standard based upon the condition existing on January 1, 1866, and carving out those coming under that standard from the inclusion in the literacy test which would have controlled them but for the exclusion thus expressly provided for. The provision is this:

"But no person who was, on January 1, 1866, or at any time prior thereto, entitled to vote under any form of government, or who at that time resided in some foreign nation, and no lineal descendant of such person, shall be denied the right to register and vote because of his inability to so read and write sections of such constitution."

We have difficulty in finding words to more clearly demonstrate the conviction we entertain that this standard has the characteristics which the Government attributes to it than does the mere statement of the text. It is true it contains no express words of an exclusion from the standard which it establishes of any person on account of race, color, or previous condition of servitude prohibited by the Fifteenth Amendment, but the standard itself inherently brings that result into existence since it is based purely upon a period of time before the enactment of the Fifteenth Amendment and makes that period the controlling and dominant test of the right of suffrage. In other words, we seek in vain for any ground which would sustain any other interpretation but that the provision, recurring to the conditions existing before the Fifteenth Amendment was adopted and the continuance of which the Fifteenth Amendment prohibited, proposed by in substance and effect lifting those conditions over to a period of time after the Amendment to make them the basis of the right to suffrage conferred in direct and positive disregard of the Fifteenth Amendment. And the same result, we are of opinion, is demonstrated by considering whether it is possible to discover any basis of reason

for the standard thus fixed other than the purpose above stated. We say this because we are unable to discover how, unless the prohibitions of the Fifteenth Amendment were considered, the slightest reason was afforded for basing the classification upon a period of time prior to the Fifteenth Amendment. Certainly it cannot be said that there was any peculiar necromancy in the time named which engendered attributes affecting the qualification to vote which would not exist at another and different period unless the Fifteenth Amendment was in view.

While these considerations establish that the standard fixed on the basis of the 1866 test is void, they do not enable us to reply even to the first question asked by the court below, since to do so we must consider the literacy standard established by the suffrage amendment and the possibility of its surviving the determination of the fact that the 1866 standard never took life since it was void from the beginning because of the operation upon it of the prohibitions of the Fifteenth Amendment. And this brings us to the last heading:

3. *The determination of the validity of the literacy test and the possibility of its surviving the disappearance of the 1866 standard with which it is associated in the suffrage amendment.*

No time need be spent on the question of the validity of the literacy test considered alone since as we have seen its establishment was but the exercise by the State of a lawful power vested in it not subject to our supervision, and indeed, its validity is admitted. Whether this test is so connected with the other one relating to the situation on January 1, 1866, that the invalidity of the latter requires the rejection of the former is really a question of state law, but in the absence of any decision on the subject by the Supreme Court of the State, we must determine it for ourselves. We are of opinion that neither forms of classification nor methods of enumeration should be made the basis of striking down a provision which was independently legal and therefore was lawfully enacted because of the removal of an illegal provision with which the legal provision or provisions may have been associated. We state what we hold to be the rule thus strongly because we are of opinion that on a subject like the one under consideration involving the establishment of a right whose exercise lies at the very basis of government a much more exacting standard is required than would ordinarily obtain where the influence of the declared unconstitutionality of one provision of a statute upon another and constitutional provision is required to be fixed. Of course, rigorous as is this rule and imperative as is the duty not to violate it, it does not mean that it applies in a case where it expressly appears that a contrary conclusion must be reached if the plain letter and necessary intentment of the provision under consideration so compels, or where such a result is rendered necessary because to follow the contrary course would give rise to such an extreme and anomalous situation as would cause it to be impossible to conclude that it could have been upon any hypothesis whatever within the mind of the law-making power.

Does the general rule here govern or is the case controlled by one or the other of the exceptional conditions which we have just stated, is then the remaining question to be decided. Coming to solve it we are of opinion that by a consideration of the text of the suffrage amendment insofar as it deals with the literacy test and to the extent that it creates the standard based upon conditions existing on January 1, 1866, the case is taken out of the general rule and brought under the first of the exceptions stated. We say this because in our opinion the very language of the suffrage amendment expresses, not by implication nor by forms of classification nor by the order in which they are made, but by direct and positive language the command that the persons embraced in the 1866 standard should not be under any conditions subjected to the literacy test, a command which would be virtually set at naught if on the obliteration of the one standard by the force of the Fifteenth Amendment the other standard should be held to continue in force.

The reasons previously stated dispose of the case and make it plain that it is our duty to answer the first question, No, and the second, Yes: but before we direct the entry of an order to that effect we come briefly to dispose of an issue the consideration of which we have hitherto postponed from a desire not to break the continuity of discussion as to the general and important subject before us.

Invarious forms of statement, not challenging the instructions given by the trial court concretely considered concerning the liability of the election officers for their official conduct, it is insisted that as in connection with the instructions the jury was charged that the suffrage amendment was unconstitutional

because of its repugnancy to the Fifteenth Amendment, therefore taken as a whole the charge was erroneous. But we are of opinion that this contention is without merit, especially in view of the doctrine long since settled concerning the self-executing power of the Fifteenth Amendment and of what we have held to be the nature and character of the suffrage amendment in question. The contention concerning the inapplicability of § 5508, Rev. Stat., now § 19 of the Penal Code, or of its repeal by implication, is fully answered by the ruling this day made in *United States v. Mosley*, No. 180, post, p. 383.

We answer the first question, No, and the second question, Yes.

And it will be so certified.

Mr. Justice McREYNOLDS took no part in the consideration and decision of this case.

Senator ERVIN. Mr. Attorney General, are there not many decisions of the Supreme Court of the United States holding that both the 14th amendment and the 15th amendment operate merely by way of prohibitions upon State actions, and that while Congress has the power under the enforcement provisions of those amendments to adopt legislation to prevent violations of those prohibitions, it does not have the power to adopt affirmative legislation and to do what those amendments presuppose the States shall do?

Attorney General KATZENBACH. Senator, I think that under the 15th amendment, as stated here, under the 15th amendment, the Federal Government has no right to establish qualifications for voters. It has got the right to, I would think under some circumstances, to prohibit, certainly to suspend those which Congress finds to be inimicable with the provisions and the enforcement of the 15th amendment. In a sense that is prohibiting State action, and in that sense, if so qualified, I would agree with the statement that you have made.

Senator ERVIN. Well, confining this to the 14th amendment, I would like to read this extract from the case of *United States v. Reese*, which is in 97 U.S. page 215:

The 15th amendment does not confer the right of suffrage upon anyone. It prevents the States or the United States; however, from giving preference in this particular to one citizen of the United States over another on account of race, color, or previous condition of servitude. Before its adoption this could be done. It was as much within the power of a State to exclude citizens of the United States from voting on account of race as it was on account of age, property, or education. Now it is not. If citizens of one race, having certain qualifications, are permitted by law to vote, those of another, having the same qualifications, must be. Previous to this amendment there was no constitutional guarantee against this discrimination. Now there is.

It follows that the amendment has invested the citizens of the United States with a new constitutional right which is within the protecting power of Congress. This right is exemption from discrimination. In the exercise of an elective franchise on account of race, color, or previous condition of servitude. Thus, under the expressions of the second section of the amendment, Congress may enforce by appropriate legislation. This leads us to inquire whether the act now under consideration is appropriate legislation for that purpose. The power of Congress to legislate at all on the subject of voting at State elections rests upon this amendment. The effect of article I, section 4 of the Constitution in respect to elections for Senators and Representatives is not now under consideration. It has not been contended nor can it be that the amendment confers authority to impose penalties for every wrongful refusal to receive the vote of a qualified elector at State elections. It is only when the wrongful refusal at such an election is because of race, color, or previous condition of servitude that Congress can interfere and provide for a punishment. If, therefore, the third and fourth sections of the act are beyond that limit, they are unauthorized.

Now, isn't the case of *United States v. Reese* in harmony with a great number of other decisions which—

Attorney General KATZENBACH. Yes, and it is in complete harmony with this bill as I read it, Senator.

Senator ERVIN. Yes, sir.

Let me ask you about section——

Attorney General KATZENBACH. You know, it is not correct to say Congress has to draft in simply a prohibitory way under the 14th or 15th amendments; in fact, Congress has drafted bills that state things affirmatively. Congress has defined what equal protection of laws is in affirmative terms.

Senator ERVIN. Yes. But Congress can only prohibit the denial of equal protection of laws. However, it does so under the 14th amendment.

Attorney General KATZENBACH. Yes. But it can state affirmatively what it believes equal protection of laws to require, and it has done so.

Senator ERVIN. Well, there are a multitude of cases that are——

Attorney General KATZENBACH. It prohibited jury exclusion, racial jury exclusion, for example.

Senator ERVIN. Yes, certainly. But it did not undertake to prescribe the qualifications for jurors. It merely provided in that act that no person should be excluded from service on a jury because of his race or color.

Attorney General KATZENBACH. How about provisions, Senator, that, for example, say that all persons can be parties, all persons can give testimony, all persons can make and enforce contracts, sell real property?

Senator ERVIN. Yes; didn't that statute say that all persons should be or should have those privileges on the same terms as white people have them?

Attorney General KATZENBACH. It just says "all persons."

Senator ERVIN. Yes, "all persons." But the original of that statute was the Civil Rights Act of 1866, and it declared in express terms that all persons should have the same rights to make contracts, to be parties, to purchase and acquire property, to give testimony on the same basis that the white people enjoyed those rights. This is nothing in the world but a provision to the effect that you cannot prohibit these people from having the same rights as white people.

Attorney General KATZENBACH. It stated it affirmatively.

Senator ERVIN. I would like to call your attention at this point to some language which is best stated in the civil rights cases of 1883. I am conscious of the fact that the opinion of Justice Clark repudiated the decision as far as the interstate commerce features were concerned, but this has never been repudiated, and it is not repudiated in that decision or anything else; it is in harmony with a multitude of decisions which I have right here. I am not going to read them all because I do not want to trespass on eternity and so they say in that case, dealing with the 14th amendment:

Until some State law has been passed or some State action, through its officers or agents, has been taken adverse to the rights of citizens sought to be protected by the 14th amendment, no legislation of the United States under said amendment nor any proceeding under such legislation can be called into activity for the prohibitions of the amendment are against State laws and acts done under State authority.

If this legislation is appropriate for enforcing the prohibition of the amendment, it is difficult to see where it is to stop. Why may not Congress, with equal show of authority, enact a code of laws for the enforcement and vindication of

all rights of life, liberty, and property? If it is supposable that the State may deprive persons of life, liberty, and property without due process of law, and the amendment itself does suppose this, why should not Congress proceed at once to prescribe due process of law for the protection of every one of those fundamental rights in every possible case as well as to prescribe the equal privileges in inns, public conveyances, and theaters? The truth is that the implication of the power to legislate in this manner is based upon the assumption that if the States are forbidden to legislate or act in a particular way on the particular subject and powers conferred upon Congress to enforce the prohibition, this gives Congress power to legislate generally upon that subject, and not merely power to provide modes of redress against State legislative action. The assumption is certainly unsound.

And then they proceed to go on at length, and lay down the fact that the power of Congress to enforce the 14th amendment is merely the power to enforce the prohibitions of that amendment which say that no state shall deprive any person of the privileges and immunities of a citizen of the United States or of due process of law or of the equal protection of the laws.

Attorney General KATZENBACH. Can I make two comments, Senator?

Senator ERVIN. Yes.

Attorney General KATZENBACH. It seems to me that what you are coming very close to saying, if I understand it correctly, is that all you can do under section 2 of the 15th amendment is to prohibit what is already prohibited by the terms of the 15th amendment.

I make two comments, and your prior emphasis upon the criminal laws and, perhaps, consistent with that theory, first of all, if that theory were correct, I do not see on what basis the 1957 and 1960 acts which went beyond that could be justified. That was appropriate legislation under the 15th amendment and, perhaps, even more strongly, if you take the terms of the 18th amendment, you recall in that the 18th amendment prohibited the sale of alcohol for beverage purposes. Those were the terms of the 18th amendment.

Under legislation enacted pursuant to that, the Congress banned the sale of beverages for medicinal purposes, and the Supreme Court upheld that in its *Everard's Breweries* against Day by saying that even though the terms of the amendment itself only talked about beverage purposes, they thought in order to make this effective, I guess having less confidence in the integrity of doctors than, perhaps, you and I might have, that they had to also proscribe it for medicinal purposes, and this was upheld. So here they went even beyond the terms of the legislation in order to effectuate its purposes.

Senator ERVIN. The 1957 act is based squarely on the 15th amendment. It does not give the Federal courts any powers except the powers to prevent the denial or abridgement of the right to vote where it is on the basis of race or color.

Attorney General KATZENBACH. Yes.

Senator ERVIN. And the 1960 act only allows them to interfere on the basis of abridgement of rights. So those acts to enforce the prohibition of the 14th amendment—

Attorney General KATZENBACH. Of course, Senator, that is all we are doing in this legislation. The only issue is between us really, if that is true, is whether or not this is an appropriate way of accomplishing that purpose; that is the only issue we have.

Senator ERVIN. Well, it is a far cry from those two actions to this one. Those were merely enforcing the prohibition against abridging the right to vote on the basis of race or color.

Here this act steps in and says that on a certain formula we are going to pass a qualification for voting. We are going to say that there shall be no literacy tests in certain areas.

Attorney General KATZENBACH. It has already been done under the 1960 act.

Senator ERVIN. Under the 1960 act?

Attorney General KATZENBACH. Yes, Senator.

Senator ERVIN. I would like to be shown it.

Attorney General KATZENBACH. There is authority in there, and it has been repeated in court decision after court decision to freeze literacy tests or, in a sense, to suspend literacy tests, and require the registration of people on the same basis that other people have been registered.

Senator ERVIN. Yes. But, Mr. Attorney General, show me something that suspends the literacy test in the 1960 act. All the 1960 act does is provide that the court shall determine the qualifications of the voters, or voting referees appointed by the courts shall determine the qualifications of voting, according to State law.

Attorney General KATZENBACH. Well, it says in there, and the words "qualified under State law"—

Senator ERVIN. Under State law.

Attorney General KATZENBACH. (Reading:)

shall mean qualified according to the laws, customs or usages of the State, and shall not in any event imply qualifications more stringent than those used by the persons found in the proceeding to have violated subsection (a).

So that is precisely what is being done here.

Senator ERVIN. No, this is not what that says. That says that they shall not be more stringent than those used by the official of the State who had denied the man the right to vote.

This bill provides that a literacy test cannot be used at all in the States and counties covered by the act.

Attorney General KATZENBACH. Where there has been discrimination.

Senator ERVIN. Well, let me read you this, section 5(a):

The examiners for each political subdivision shall examine applicants concerning their qualifications for voting. An application to an examiner shall be in such form as the Commission may require, and shall contain allegations that the applicant is not otherwise registered to vote, and that within 90 days preceding his application he has been denied under color of law the opportunity to register or to vote or has been found not qualified to vote by a person acting under color of law, provided that the requirement under the latter allegation may be waived by the Attorney General.

Now, I ask if under that provision these examiners cannot register or undertake to pass upon the qualifications of any person applying regardless of whether that person has been denied the right to vote on account of his race or color?

Attorney General KATZENBACH. Yes, they could, if you put it in terms of that person.

Senator ERVIN. That is what it says, does it not?

Attorney General KATZENBACH. Yes.

Senator ERVIN. And so this provision—

Attorney General KATZENBACH. We do not make every single person get; denied under this, any more than is required with Federal registrars, Federal referees, under the 1960, 1964 acts.

Senator ERVIN. Under this provision, the Federal examiner passes upon the qualifications of white people who have never at any time been denied the right to register and vote on account of their race.

Attorney General KATZENBACH. That is right, sir.

Senator ERVIN. And he can order them to register and to vote.

Attorney General KATZENBACH. That is right, sir.

Senator ERVIN. And in State elections as well as local elections, as well as for elections of Senators and Representatives in Congress.

Attorney General KATZENBACH. That is correct, Senator.

Senator ERVIN. Under and by the same authority of that section, the examiner can take and pass on the right or qualifications of Negroes to vote regardless of whether they have ever been denied the right to vote on the basis of their race or color.

Attorney General KATZENBACH. They, as individuals, yes, sir; that is correct.

Senator ERVIN. Yes, sir.

I have already gone over the question about the fact that they suspend the literacy test for 5 years or 10 years, whichever it is.

Attorney General KATZENBACH. Ten years, Senator.

Senator ERVIN. Senator Fong asked you if you did not think that section 9(a) which defines a crime, should contain the word "willful" and require the act to be willfully done.

Attorney General KATZENBACH. Yes.

Senator ERVIN. And you said you did not think so or you disapproved of that.

Attorney General KATZENBACH. That is right, Senator.

Senator ERVIN. Now, under this provision—

Attorney General KATZENBACH. I think he was referring actually to section 7, if I recollect, but the same would be true in 9, Senator.

Senator ERVIN. Section 9; I was wrong, it was 9(a), I believe.

Attorney General KATZENBACH. Yes, sir.

Senator ERVIN. Now, under 9(a) a person can be convicted of this crime and suffer the punishment which it prescribes even though he had no willful intention to deprive any person of the right to vote, can he not?

Attorney General KATZENBACH. No, Senator, he has to at least intend the consequences of his acts.

Senator ERVIN. It does not say that. You are talking about the presumption of law that a person must intend the consequences of his act. But he might intend the consequences of his act, namely, to deny the man the right to vote although he might do it on good faith, and on honest grounds, and he would be subject to punishment under this act.

Attorney General KATZENBACH. I do not know under what grounds—I have difficulty—perhaps if you could give me a case, Senator, it would help me.

The general law and the criminal law is if you have got a criminal penalty you have to show that a man intends what he does, that it is not an involuntary act on his part, and he intends to do what he is doing. You have to show criminal intent of that kind, and I would think that—

Senator ERVIN. All that is required is that he shall deprive a person of a right secured by this law, this bill, and if he does that in good faith thinking that he is justified in so doing, then he can be punished for depriving a man of the right to vote.

For the life of me, I cannot see why there is objection to putting the word "willful" in there because it only means he does it intentionally.

Attorney General KATZENBACH. If it only means he does it intentionally, Senator, then it is already included. I think it might be deemed to mean something more than that, and normally when an unnecessary word of that kind is put in a criminal provision, the court reads a special meaning into it.

Senator ERVIN. Well, I know of very few criminal offenses that are punishable by as much as 5 years' imprisonment and \$5,000 fine that do not require that the action be willful or intentional. Here there is no such requirement.

Attorney General KATZENBACH. Section 241, for example, almost identical penalties to this, does not use the words "willfully or intentionally."

Senator ERVIN. Yes. But decisions construing that say it has to be willful; 242—

Attorney General KATZENBACH. 241, Senator, was the one I referred to.

Senator ERVIN. 241—242, concerning a much lesser offense than that created by section 9 (a) of this bill, require that the man shall act willfully.

Attorney General KATZENBACH. Yes. I think 241 does not, Senator.

Senator ERVIN. 241 reads if two or more persons conspire to injure, oppress, threaten or intimidate any person. Now persons cannot conspire unless they enter a conscious agreement and have a meeting of minds. The purpose of their conspiracy must be to injure or oppress. You have the equivalent of more than willful there, because it has to be a meeting of the minds, they have to agree on the same thing, and the purpose of that agreement must be to injure somebody. That is the way I read it. Don't you think that a man in order to enter a conspiracy would have to make an agreement, and the agreement would contemplate a meeting of minds on a specific thing to be done. Certainly if he agrees to injure somebody he is acting intentionally or willfully.

Attorney General KATZENBACH. Four Justices in the Supreme Court did not agree with that view in the *Williams* case, Senator.

Senator ERVIN. Where did that case originate, maybe you will call it to mind?

Attorney General KATZENBACH. It came up in the Supreme Court. Justice Frankfurter and three Justices—the citation is 341 U.S. 70.

Senator ERVIN. They certainly did not hold that a person could not be convicted of a conspiracy unless they had a definite conspiracy to injure somebody.

Attorney General KATZENBACH. No, that is correct, Senator.

Senator ERVIN. Wasn't that a question of whether they had to have a specific intent—

Attorney General KATZENBACH. Yes.

Senator ERVIN. To violate depriving a man of his constitutional rights?

Attorney General KATZENBACH. Yes.

Senator ERVIN. In other words, they held, in effect, that in addition to conspiring to do these enumerated things, they must have a specific intent to deprive him of a constitutional right?

Attorney General KATZENBACH. Yes.

Senator ERVIN. And five of the judges held that and four disagreed.

Attorney General KATZENBACH. It was 4 to 4 actually, if I recollect. One was not sitting in that.

Senator ERVIN. There were four who took the position that there had to be an intent to deprive, a specific intent to deprive, of constitutional rights, which failed because that was in harmony with the lower courts.

Attorney General KATZENBACH. Yes. Four said not, and Justice Black concurred on an independent ground.

Senator ERVIN. And I believe practically the same decision was made by at least five judges in the *Screws* case, was it not?

Attorney General KATZENBACH. Yes, that is my reason as to why it is unnecessary.

Senator ERVIN. Do you not know that the present census lists as residents of State or locality the people in military service there?

Attorney General KATZENBACH. Yes, Senator.

Senator ERVIN. And they also list as residents for locality those people attending school?

Attorney General KATZENBACH. Yes, Senator, that is right.

Senator ERVIN. So I would like to show for purposes of the record what I stated a moment ago in a colloquy with you and Senator Fong. Cumberland County is a county which contains Fort Bragg, which is, as I understand it, the largest Army post in the United States, and the largest military post on the face of the earth. Craven County contains Cherry Point, a marine installation. Pitt County, the third of these counties that would be deprived of the right to exercise a constitutional function under this, has East Carolina College, which has approximately 6,000 students. If you take the number of marines in Craven County, the number of soldiers at Fort Bragg, and the number of college students at East Carolina College, that live outside of Pitt County, and deduct them from this total population, those three counties would have voted more than 50 percent of the people of voting age in them during the last presidential election. This shows how this formula works.

Attorney General KATZENBACH. Senator, I suppose it is possible that some of those people were registered and voted, wouldn't you think?

Senator ERVIN. It would be possible, but a great majority of them did not.

Attorney General KATZENBACH. So the difficulty is if we excluded all people in military service, for example, which could be done, we would also be excluding some people who are registered and who voted within that State. Now we—

Senator ERVIN. The chances are—

Attorney General KATZENBACH. We have not done it on a county basis. But we did do it on a State basis, and took the view that let's

see what the figures would be if all figures in military service were excluded, and we found out that in all States except Alaska would be covered by this, the percentage would not affect coverage if they were included. So we thought that for that reason there was some demonstration that more than half of these people may have voted where they were stationed. So for that reason we thought we were making the test fairer by including them rather than by excluding them.

Senator ERVIN. You are not informing me that with respect to Fort Bragg the Department of Justice went into Fort Bragg and ascertained how many people in Fort Bragg were registered and voted there?

Attorney General KATZENBACH. No, Senator, we did not do that. I said we only did it with respect to the States. We did not do anything with respect to the counties in North Carolina. I do not think we have examined it in that way. But the indication we had from the States was that apparently as far as military personnel and dependents, and so forth, were concerned, that at least something in the neighborhood of half of them were actually voting and registering in the places that they were stationed.

Senator ERVIN. Well, as a matter of fact, in order for a military man to be registered he has to acquire a residence under State law, doesn't he?

Attorney General KATZENBACH. Yes.

Senator ERVIN. And the general rule is that a man does not acquire a residence under a State law unless he locates there permanently or locates there for an indefinite period of time with no present intention in his mind of removing from it; isn't that so?

Attorney General KATZENBACH. Yes. I should think anybody in military service would, might very well, qualify under that.

Senator ERVIN. Don't you know that most military men, like the former President, President Eisenhower, who did not even register to vote until he was 62 years of age, on account of that rule of law—

Attorney General KATZENBACH. I recall that fact was brought out in the case of President Eisenhower.

Senator ERVIN. And I would say that very few military people register. As a matter of fact, it was only the other day in the State of Texas that one of the Federal courts held that they could not deny a military man the right to register if he says he was a permanent resident of the community. So I do not believe many of them register. That is just a belief. I have no figures.

I notice in the Third District, one of the counties in North Carolina which would lose its right to exercise its constitutional power, is Wayne County, and it is the site of one of the largest hospitals for the mentally ill in North Carolina.

I want to ask you if the mentally ill are not counted as residents in a place where they are hospitalized?

Attorney General KATZENBACH. I assume that they are. I do not know the answer to that, Senator, but I certainly would not deny it, nor would they be registered under this act.

Senator ERVIN. No, they would not be registered and would not vote, but they would be counted as part of the total population for the purpose of ascertaining the percentage of people who voted.

Attorney General KATZENBACH: Yes, I think they well might be.
 Senator ERVIN. So that is another reason I think that this test is sort of, as I say in good North Carolina language, cockeyed. It is lacking rhyme and reason.

I wish you would look at page 7. You have got a provision—maybe it is not page 7 because I have got an amendment here. It is section 9(b).

Attorney General KATZENBACH. Yes, Senator.

Senator ERVIN. This provides that in any case where an examiner has been appointed, any election official in any political subdivision who alters the record of voting in such election made by a voting machine or otherwise shall be fined not more than \$5,000 or imprisoned not more than 5 years or more. Doesn't it say that?

Attorney General KATZENBACH. Yes, sir.

Senator ERVIN. And even under the language of this section, he would be subject to that fine and imprisonment even though he altered the record for the purpose of showing the truth of what happened in the election, would he not?

Attorney General KATZENBACH. Altered it for the purpose of showing the truth?

Senator ERVIN. Yes. He would fall within the condemnation of the words of that section even though he altered the records for the purpose of making a true report of the election.

Attorney General KATZENBACH. You have in mind a situation where the tally sheet is changed because he misheard it or something of that kind?

Senator ERVIN. Well, I think about this situation. In North Carolina we have election officials, registrars, and the judges of election, who make their report to the county board of elections, and if they would find out after they had compiled their records that they had made an error in the addition, and then they altered it so as to make it bear the truth, this is a broad enough statute to catch them.

Attorney General KATZENBACH. Yes, under that construction, Senator, it might be; that provision here is taken straight out of the existing law which Congress has already enacted.

Senator ERVIN. Yes. But don't you think it should be modified to show that it must be a corrupt fraudulent alteration?

Attorney General KATZENBACH. I would suppose the intention of this was that it would be corrupt or fraudulent—

Senator ERVIN. But it does not say so.

Attorney General KATZENBACH. Alteration. Nor does the existing law on the same subject, Senator.

Senator ERVIN. Is this a verbatim copy?

Attorney General KATZENBACH. I will read you section 302 of the Act of 1960, which is 1974(a) which says:

Any person, whether or not an officer of election or custodian, who willfully steals—

Senator ERVIN. Willfully.

Attorney General KATZENBACH (continues reading):

steals, destroys, conceals, mutilates or alters any record or paper required by section 301 to be retained and preserved shall be fined not more than—

and so forth, "and imprisoned." It does not say there—

Senator ERVIN. It says willfully though.

Attorney General KATZENBACH. Willfully alters.

Senator ERVIN. Yes, willfully alters.

Attorney General KATZENBACH. Yes, but willfully alters, he could be very willful in his correction of that mistake.

Senator ERVIN. He has to do it wrongfully.

Attorney General KATZENBACH. It does not say wrongfully, Senator. It just says willfully.

Senator ERVIN. I say that says willfully; this does not.

Attorney General KATZENBACH. I do not see how the addition of the word "willfully" to this would improve the problem that you state.

Senator ERVIN. Well, the difference is in one case if a man does alter it in good faith he is subject to this punishment. In the other case, unless he does it wrongfully on stubborn purpose, that is the ordinary definition of willful, he would not be guilty, and yet he cannot even correct the record to show the truth without being subject to fine and imprisonment. I point that out because I think—

Attorney General KATZENBACH. Would the word "willfully" in section (b) meet your point, Senator?

Senator ERVIN. It would certainly make it better.

Attorney General KATZENBACH. I have no objection to the word "willfully" in there.

Senator ERVIN. I think that is another indication, however, that this bill was drawn in haste, without—I am blaming nobody, but certainly—

Attorney General KATZENBACH. Senator, the other day we went into the history of this and found out that as far as Article I, section 2 is concerned, it only got drafted, which is the one you have been basing so much on, only got drafted in the last 6 days of the Convention. I suppose you could say that was drafted in haste also.

Senator ERVIN. I think it was—no, I don't think it was. Section 3(a)?

Attorney General KATZENBACH. No, article I, section 2 of the Constitution did not appear at all until the last 6 days of the Convention, but I do not think it means something was drafted in haste necessarily.

Senator ERVIN. Article I?

Attorney General KATZENBACH. We do not claim perfection in the drafting. We think people can improve it even if you take a long time in drafting it.

Senator HART. Would the Senator yield? Is "willful" as desirable as "wrongful"? Is one always wrongful who is willful?

Senator ERVIN. Yes, yes. As the saying goes wrongful and stubborn. It has to be with stubborn purpose.

Senator HART. Intending a good end would not include a fellow who is willful.

Senator ERVIN. If he deliberately alters anything it would imply he was altering it for a wrongful purpose, and here he would be caught although he altered it in the best of good faith.

I do not accept what was brought out by Senator Dirksen here the other day about the first article of the Constitution. I put something in the record along those lines.

The very first article of the Constitution which gives to the States the rights and duty to prescribe the rights and duties of voters has not disappeared. It has not been repealed, and its meaning is as clear today as it was 172 years ago.

Article I, section 2 of the Constitution says very clearly that in choosing rep-

representatives for Congress the electors in each State shall have the qualifications requisite for electors for the most numerous branch of the State legislature. According to James Madison's Journal of the Constitutional Convention, this would seem to be the provision that met with the most complete approval by the delegates. In fact, the only dissension over this clause arose when Governor Morris proposed that all electors and representatives should be required by the Constitution to be freeholders. However, the overwhelming majority of the framers felt that the right of the States to prescribe qualifications should remain unfettered. According to Oliver Ellsworth of Connecticut, the States are the best judges of the circumstances and temper of their own people. The delegates were, in fact, loath to submit to the national legislature the power to decide who might vote.

George Mason of Virginia said the power to alter the qualifications would be a dangerous power in the hands of the national legislature.

James Madison himself took the floor often to defend this article which he helped to draft—

And James Madison was about as good a draftsman as this country ever knew.

At one point he noted that the right of suffrage was certain one of the fundamental articles of republican government and ought not to be left to be regulated by the national legislature.

On August 8, 1787 the section was unanimously approved by the Convention.

Now, there happened to be a lot of argument and stuff about the Convention unanimously approving it, and so on and so forth. So I do not think there is any comparison between the First amendment and this bill.

Attorney General KATZENBACH. Well, I grant you we did not have the skill of James Madison, Senator.

Senator ERVIN. Now there is one other provision in the bill that I wish to talk about, and then I will cease to allude to what I conceive to be its defects. Section 8 in effect says that a State legislature cannot change its laws in imposing qualifications or procedures for voting and make them effective until such law or laws have been finally adjudicated in an action for a declaratory judgment against the United States in the District Court for the District of Columbia.

Attorney General KATZENBACH. Yes.

Senator ERVIN. And such qualifications or procedures will not have the effect of denying or abridging rights guaranteed by the 15th amendment. In other words, a State legislature has full power under the Constitution to pass laws regulating procedures for voting and prescribing qualifications. Yet, unless the State comes up here and gets in a lawsuit with the United States in the District Court of the District of Columbia, its laws cannot become effective on that subject, can they?

Attorney General KATZENBACH. The laws of the States and political subdivisions covered by that; yes, that is correct.

Senator ERVIN. Well, I cannot see the purpose of that, since this bill does not attempt to abolish any State laws except those relating to whether they find them to be tests or devices; does it?

Attorney General KATZENBACH. No; that is correct, Senator.

Senator ERVIN. And doesn't section 8(b) make it very clear that any test or device shall mean any requirement that any person as a prerequisite for voting or registration for voting demonstrate the ability to read, write, understand or, to shorten that, doesn't section 8(b) outlaw every literacy test and every understanding test in any of the States or counties covered by this act?

Attorney General KATZENBACH. Yes, it does, Senator.

Senator ERVIN. Yes.

Since the bill does not intend to affect anything except tests or devices as defined in the bill, and any test or device that is contrary to the bill would already be null and void if the bill is constitutional, why in the world do you have to have a court test before a State can change its law?

Attorney General KATZENBACH. Well, Senator, it may be redundant insofar as it uses the word "qualifications," if you equate qualifications with tests or devices.

It occurred to us that there are other ways in which States can discriminate, and we have had experience with State legislative efforts in other areas, for example, limiting the registrars to very short periods of time, or the imposition of either very high poll taxes or property taxes which would have the effect of denying or abridging rights guaranteed under the 15th amendment, that kind of law should be covered, too.

This was put in with an effort of not letting a State legislature continue past practices of discrimination, preventing that or subjecting that to judicial review, somewhat the same way that State reapportionment plans are subjected to judicial review in order to determine their constitutionality.

Senator ERVIN. Well, you have a provision in this bill to the effect that an examiner can go and order people registered.

Attorney General KATZENBACH. Yes, sir.

Senator ERVIN. And an examiner is told to disregard State devices—

Attorney General KATZENBACH. Yes. I do not think this is necessary with respect to tests and devices, and I do not suppose that tests and devices could be questioned under it.

But the effort here was to get at things that were not included within the words "tests and devices." And the thought that other things that violated the 15th amendment by a State should also be subjected to judicial review.

Senator ERVIN. It seems to me that is a drastic power which can hardly be reconciled with the federal system of government, if we still have a federal system of government.

Attorney General KATZENBACH. I think it is quite a strong power, Senator. The effort is to prevent this constant slowing down process which occurs when States enact new laws that may clearly be in violation of the 15th amendment, but you have to go through the process of getting judicial determinations of that. It takes a long time. In the interval the purposes of the act are frustrated.

Now, there may be better ways of accomplishing this. I do not know if there are. There are some here I can imagine, a good many provisions of State law, that could be changed that would not in any way abridge or deny the right; and we, perhaps, except for the fact that some members of the committee, I think, including yourself, have had difficulty with giving the Attorney General discretion on some of these things—perhaps this could be improved by applying it only to those laws which the Attorney General takes exception to within a given period of time. Perhaps that would remove some of the burdens.

Senator ERVIN. I take the State of North Carolina, the qualifications for voting in North Carolina which are prescribed in the State constitution.

Attorney General KATZENBACH. Yes.

Senator ERVIN. And it cannot be changed without a two-thirds vote of each house of the legislature.

Attorney General KATZENBACH. Yes.

Senator ERVIN. And it cannot be changed even then until the majority of the people of the State of North Carolina agree to it.

Attorney General KATZENBACH. Yes.

Senator ERVIN. And it would seem to me that it is efficacious to say that North Carolina cannot legislate in this field, even by constitutional amendment, and make the legislation valid without getting such an adjudication. It seems to me that is putting North Carolina in a mighty low state in the Federal structure.

It seems to me it is rather persecutive in nature, more than necessary. That is my own opinion.

I want to go back to section 3(a) for just a minute. This section 3(a) does not invalidate a State literacy test merely because you have a State literacy test, does it?

Attorney General KATZENBACH. No; it does not, Senator.

Senator ERVIN. It only invalidates it where less than 50 percent of the people voted in the election of 1964?

Attorney General KATZENBACH. Yes, Senator.

Senator ERVIN. I think this is a fair provision to show how it operates. Take the District of Columbia. This was furnished to me by somebody else, and I have had it checked by the Congressional Library for accuracy as to figures:

Total number of District residents of voting age-----	512,000
Total registered (42.6 percent of the total)-----	220,000
Not registered (57.4 percent)-----	296,000

This was in spite of the fact that the country had amended the Constitution to permit District residents to vote in the presidential election and a strong drive was put on here to register everybody—special registration places set up and kept open evenings and weekends to handle the registration.

Attorney General KATZENBACH. Yes.

Senator ERVIN (continues reading):

All that was required for registration is that the applicant be 21 years of age or older, have resided in the District for at least a year, not be registered to vote elsewhere or not claim a voting residence in another State. The only disqualification for voting is to have been convicted of a felony and not pardoned, and to be mentally incompetent at the time of registration. There is no absentee voting.

With all this, only 42.6 percent of District residents of voting age were registered, and of those 90 percent voted in the 1964 presidential election—with a vigorous "get out the vote" campaign—so that in the end only 38.4 percent of the voting-age population of the District actually went to the polls. So, had the District had any literacy test, the bill would hold, ipso facto, that there was discrimination on the basis of race or color.

The excuse given for the low percentage is, of course, that there are so many Government employees living here who vote in other States, but the same would apply to northern Virginia and also to other political subdivisions where there are large concentrations of military or civil employees of the Federal Government. There are great concentrations of military employees in many parts of the South.

Whether literacy tests of themselves or even discrimination in their application are conclusive evidence of a low percentage of voting is questionable on the basis of the following statistics:

Florida has no literacy test, but in 1964 the turnout was only 52.7 percent of the voting-age population, and in five counties the percentage was less than 50 percent—in one county, only 36.6 percent.

Arkansas has no literacy test, but in 1964 statewide only 49.9 percent of the voting-age population voted, and in 19 counties the percentage was below 50 percent—in 1, down to 35.4.

In Kentucky, with no literacy test, the State's percentage was 52.9 percent, with 13 counties below 50 percent—1 with the magnificent figure of 24.4 percent.

Even Maryland, with a percentage statewide of 56 percent, had three counties that went below the 50-percent mark.

How unrealistic the percentage criterion is is best illustrated by a comparison between North Carolina, which has a literacy test, and its neighbor Tennessee, which does not have a literacy test. In 1964, North Carolina's percentage statewide was 51.8 percent, while Tennessee's was 51.1 percent, or slightly lower. In North Carolina, there was 84 out of 100 counties which had a percentage of less than 50 percent while in Tennessee there were 22 out of 95 counties with less than 50 percent. Tennessee also has somewhat more lenient residence requirements—1 year in the State, 3 months in the county, and 30 days in the district, while in North Carolina, it is 1 year in the State and 4 months in both the county and the district. North Carolina also has considerably more Negroes than does Tennessee—about 25 percent of its population, as against about 17 percent in Tennessee. Yet, despite all these factors, the statewide vote was approximately the same in both. Was it literacy tests that caused the low percentage or just the general apathy of both white and Negro? Can it by any law or logic be proved that North Carolina is guilty of denying the vote while Tennessee isn't, simply because the latter doesn't have any literacy test?

I would interpolate here that North Carolina and Tennessee are virtually the same kind of States, settled by the same kind of people, and their legal systems, with the exception of Tennessee abolished the literacy test, are about the same because Tennessee derives its common law from North Carolina law, and I cannot imagine a better two States for comparison.

An even more astounding situation with reference to this would be—I will give in a moment with respect to the State of Texas. If you want to make any comments on any of these, Mr. Attorney General, at this time, I do not want to shut you off.

Attorney General KATZENBACH. No. We submitted the statistics which we think bear it out, and I do not think it is a condition, Senator, of its constitutionality that the test applied with absolute precision to every single area. I think it is significant that of the States which have literacy tests, and which voted less than 50 percent, that six of those seven States should be located in areas where there have been racial problems of one kind or another.

Senator ERVIN. I believe yesterday you used the expression "the old Confederacy."

Attorney General KATZENBACH. What?

Senator ERVIN. I believe yesterday you spoke of North Carolina as being part of the old Confederacy.

Attorney General KATZENBACH. Yes.

Senator ERVIN. Now, Tennessee was a part of the old Confederacy.

Attorney General KATZENBACH. Yes.

Senator ERVIN. And North Carolina voted more people, a higher percentage than Tennessee, which has no literacy test.

Attorney General KATZENBACH. Yes.

Senator ERVIN. It would be just as logical to say that more people vote in North Carolina than Tennessee because North Carolina did have a literacy test and Tennessee did not have one. It is just as logical.

Attorney General KATZENBACH. Senator, it may very well be, and I have conceded it here several times, there may very well be violations of the 15th amendment that exist in States other than those with literacy tests.

I thought it was interesting in your statistics that when you took States that you were comparing with these States, so many of those States did come from the same general area which has been subjected to the same general problems. I have conceded here that I think there may well be racial discrimination in the northern part of Florida which has no literacy test. Florida was one of the States that you mentioned. We have brought suits and established them in the State of Tennessee. Tennessee was one of the States that you mentioned.

There may well be some racial discrimination in the State of Arkansas, and Arkansas was one of the States that you mentioned.

So it seems to me, Senator, that the statistics that you just read, in my judgment, support the provisions of 3(a), and tend to show how very reasonable those provisions are, and I am happy that those statistics are in the record.

Senator ERVIN. In reaching that conclusion how much weight did you give to the fact that these States—that the State of North Carolina, the State of South Carolina, the State of Georgia, the State of Alabama, the State of Mississippi, the State of Louisiana, can be classified as one-party States, whereas Tennessee has a very strong two-party system? Did you give any discount for the fact that people do not come out and vote very much in a State where there is no opposition party to require a hot election?

Attorney General KATZENBACH. There was pretty good opposition in the 1964 election, Senator, in a lot of those States. I do not recall that—I think the one party you are referring to is the Democratic Party, and I do not recall that—those States were in the pocket of the Democratic candidate for the President. As a matter of fact, I rather think it was the opposite.

Senator ERVIN. Yes; and that is one of the things that is right interesting, and in that connection, a lot of people in this area from North Carolina, where virtually every county in this section of North Carolina fell below a 50-percent vote, were counties in which the people had always been Democrats, in the overwhelming majority. They are not accustomed to voting the Republican ticket under any circumstances, and they did not like to vote Republican, and many of them were very much dissatisfied with the Democratic ticket on account of civil rights issues. One man who ran for Governor of North Carolina twice, Beverly Lake, and carried that area of the State, and who knows it, said the reason they had a vote below 50 percent in certain counties was because the Democrats didn't want to vote for the Republican candidate and did not like to vote for the Democratic ticket.

I will put this in the record. It is a clipping from a North Carolina newspaper.

(The newspaper article referred to follows:)

L.B.J.'s VOTING BILL STRAFTED BY LAKE

Raleigh Attorney Beverly Lake declared Monday that President Johnson's voting rights proposal would be "a revival of Reconstruction tyranny."

Lake, twice defeated for the Democratic nomination for Governor, asserted in a television talk that the proposed law "is unconstitutional and unjust in so many respects it is impossible to mention them all in 2 hours, let alone 2 minutes, so let's look at one of them."

"This bill provides no person shall be denied the right to vote in any election because of his failure to comply with any test in any county of a State, which last November required any test for voting, if less than half of the people in the county over 21 voted in the election last fall," Lake said.

LITERACY TEST

"North Carolina has a literacy test for voting," he added. "The U.S. Supreme Court has held it constitutional. In 34 of our counties less than half of the adults voted last fall."

"Under this bill, North Carolina will be denied the right to continue to apply this wise and valid law in 34 counties simply because last November most of the adults, having to choose between a Republican and Lyndon Johnson, did not vote at all," Lake continued.

"Not only is our literacy test thrown out," he said, "we cannot require any educational achievement at all, not even completion of the first grade, in these counties. We are forbidden to require voters to be of good moral character."

"Another State, having exactly the same literacy test as ours, but in all the counties of which half of the adults voted last fall, can continue to require its voters to meet that test all over the State, but North Carolina cannot."

"This bill creates second-class States in America and puts North Carolina and many of our sister States, including the great States of Alabama and Mississippi, in the second class," Lake declared. "We are no longer to be permitted to make and enforce laws other States can make and enforce."

"That is what the President proposes to do to you," he said. "Don't you think our Governor and our legislature ought to make known to the country that North Carolina objects to this revival of Reconstruction tyranny and should assure our Senators and Congressmen of the full backing of the State in opposing it?"

Senator ERVIN. I still went down those counties and did the best I could to persuade them to vote Democratic.

Attorney General KATZENBACH. I know you did, Senator.

Senator ERVIN. But the District of Columbia was rather overwhelming for the President, was it not, where only 38 percent voted?

Attorney General KATZENBACH. For the first time.

Senator ERVIN. Yes.

Attorney General KATZENBACH. For the first time.

Senator ERVIN. Well, let us take the State of Texas.

Attorney General KATZENBACH. Yes.

Senator ERVIN. It is interesting to note that the State of Texas is excluded from this act, and the State of Louisiana is included in it, although the State of Louisiana voted a higher percentage of its voting population than the State of Texas.

Attorney General KATZENBACH. That is correct, Senator.

Senator ERVIN. And that shows again how curious this formula is and how little it reflects conditions.

Attorney General KATZENBACH. Senator, I think what is shown is that Louisiana has a literacy test which has been a terrible headache to us in case after case after case in violation of the 15th amendment, where we have won victory after victory, and where the State of Louisiana has passed a new law after a new law in order to support racial discrimination.

I think the reason for the inclusion of literacy tests here as the criteria was that it was literacy tests that we have found in experience

after experience after experience that a number of States have had—in a number of States which has been the device for violation of the 15th amendment, and that is the reason the literacy test qualification is put in here.

This is supported by the record, it is supported by the whole record, of the Department of Justice, and that is the reason why literacy tests are one of the criteria.

We are not saying that here, that all by themselves literacy tests constitute racial discrimination. We are saying that literacy tests have been used for that purpose in State after State, and we think there is a relationship between that and racial discrimination, and we think that to enforce the rights of the 15th amendment it is necessary to suspend the operation of literacy tests in those areas of the country where there is reason to believe they have been used to effectuate discrimination, and had we been aiming at other things other than literacy tests, this would have to have been drafted in another manner.

Senator ERVIN. That is the reason I have trouble with the theory of this bill. The fact that only 49.6 percent of the people of these 84 North Carolina counties voted, constituting evidence, sufficient evidence, that Catawba and Beaufort Counties were violating the 15th amendment, but the fact that only 38.4 percent of the people of voting age in the District of Columbia voted, does not show there was any violation of the 15th amendment in the District of Columbia.

The fact that in the State of Louisiana 47.3 percent of the people voted shows that there were violations of the 15th amendment in the State of Louisiana, but the fact that less than that; namely, 44.4 percent of the people of Texas voted does not show there is any violation of the 15th amendment in the State of Texas.

Attorney General KATZENBACH. Senator, in the first place, because the test might not and need not constitutionally be absolutely precise, section (c) was put in to enable a State to come in and show that it was not for reasons of discrimination, that they had not committed discrimination, in that State. It would not make any sense, in my judgment—we are aiming at the principal device that has been used, literacy tests, and similar tests and devices—it does not make any sense to abolish them in the District of Columbia because they do not exist there. It does not make any sense to abolish them in Texas, they do not exist there.

Senator ERVIN. Instead of bringing a bill and making the continuance of the literacy test dependent upon the number of people who voted, wouldn't it make more sense to bring a bill which applies to a State where less than 50 percent of the people voted, and to every county and every State where less than 50 percent of the people voted, that this bill will apply. Why not do that and make it fall like the Lord's rain upon the just and the unjust alike.

Attorney General KATZENBACH. In a sense it already does that, Senator, because there are no literacy tests in those States.

Senator ERVIN. But the percentage of voting in many of these States is much less.

Take, for example, the State of Texas, which is one of the worst illustrations, only 5 States and the District of Columbia, of the 51 voting areas in the United States in the 1964 election, voted less than the State of Texas, and yet the figures that are used to condemn North Carolina are not used to condemn Texas.

Attorney General KATZENBACH. Senator, if you look at the less than 50 percent of people who voted in the presidential election of 1964, if you look at that without regard to literacy tests, you find in Alaska, which has a literacy test, covered 49 percent; you find Alabama, which has a literacy test, covered with 46 percent; you find Arkansas, which has no literacy test, 49.9 percent; you find Georgia, which has a literacy test, at 43 percent; you find Louisiana, which has a literacy test, at 47 percent; you find Mississippi, which has a literacy test, of 33 percent; you find South Carolina, which has a literacy test, at 38 percent; you find Texas, which does not have a literacy test, but which does have a poll tax, of 44 percent; and you find Virginia, which has a literacy test, at 41 percent.

I have read all of the States which voted less than 50 percent.

Senator ERVIN. Yes. But you—

Attorney General KATZENBACH. Don't you think it is significant that on this figure which you say bears no relationship at all, that with two exceptions, Arkansas which is at 49.9 percent, and Texas which is at 44 percent, those are the only two States that did not have literacy tests that were less than 50 percent?

Senator ERVIN. Yes. But here is North Carolina which voted—I will just use this figure.

Attorney General KATZENBACH. North Carolina is not in it.

Senator ERVIN. North Carolina voted 51.8 percent of its total voting population and Tennessee voted 51.1 percent of its total voting population.

Attorney General KATZENBACH. Yes.

Senator ERVIN. And that proves, according to the theory of this bill, that North Carolina was violating the 15th amendment while Tennessee was not.

Attorney General KATZENBACH. What we are claiming under section 3(a), Senator, is not low voting alone showing discrimination. What we are claiming is that low voting and a coincidence of a literacy test, and the disproof of that, insofar as you can do it, is that of the 50 States, 41 of them had over 50 percent, and of those 9 that had under 50 percent, 7 of them had literacy tests. I think that is a pretty good test.

Senator ERVIN. And the most flagrant examples of low voting, some of the most flagrant, didn't have a literacy test, and yet that proves—

Attorney General KATZENBACH. You say some, Senator; only two.

Senator ERVIN. And that suggests people are prevented from voting.

Attorney General KATZENBACH. Arkansas had 49.9, and Texas had 44; only two States failed to get 50 percent or better that didn't have literacy tests.

Senator ERVIN. The State of North Carolina has 100 counties; 34 of those counties are brought under this act, and the State of North Carolina is deprived of the right to have a literacy test in it.

Attorney General KATZENBACH. In those 34 counties.

Senator ERVIN. In those 34 counties.

Attorney General KATZENBACH. Unless they can show they did not discriminate.

Senator ERVIN. Unless they come up here and show they have not sinned in the last 10 years.

Here is the State of Texas. North Carolina voted over 50 percent, the State of Texas voted 44 percent, and Texas has 254 counties, 137 of them voted out of the 254, voted less than 50 percent of their population of voting age, and Texas is exempt from the law, North Carolina is included for 34 counties, and I would like to put in the record here a statement showing the 137 counties in Texas that are exempt, where 34 of North Carolina counties are included.

(The information referred to follows:)

Texas

	Voting age population	Voted in 1964 for President	Percent voting
Total, State.....	5,922,000	2,626,811	44.4
Selected counties:			
Bexar (San Antonio).....	377,990	162,520	43.0
Dallas (Dallas).....	570,267	334,168	58.3
Harris (Houston).....	722,957	382,983	52.0
Tarrant (Fort Worth).....	320,355	154,153	48.1
Other counties with less than 50 percent:			
Anderson.....	17,544	8,181	46.6
Atascosa.....	9,968	4,516	45.3
Austin.....	9,016	3,915	43.4
Bastrop.....	10,428	5,049	48.4
Baylor.....	3,824	1,794	46.9
Bee.....	12,284	4,832	39.4
Bell.....	55,160	17,512	31.7
Borquo.....	7,809	3,721	47.5
Bowie.....	30,280	17,470	48.0
Brasos.....	24,944	12,019	48.2
Brown.....	16,380	7,203	44.5
Burleson.....	6,797	3,147	46.3
Caldwell.....	10,236	4,629	45.2
Cameron.....	74,389	26,659	34.5
Cass.....	14,020	6,292	44.9
Cherokee.....	21,319	8,537	40.0
Coleman.....	8,347	4,106	49.2
Collin.....	26,723	11,193	42.5
Collingsworth.....	3,876	1,872	48.3
Comanche.....	8,339	3,819	45.8
Coryell.....	13,909	4,964	32.8
Dallam.....	3,883	1,769	45.5
Dawson.....	10,431	4,866	46.7
Denton.....	27,606	13,494	48.9
De Witt.....	12,712	5,573	43.8
Dimmit.....	4,866	1,688	34.8
Ector.....	49,494	22,886	45.2
Ellis.....	28,183	10,062	35.8
El Paso.....	166,101	58,927	33.7
Falls.....	18,086	8,161	39.8
Fannin.....	16,277	7,200	44.3
Fayette.....	13,614	5,677	41.7
Foard.....	1,999	980	49.0
Fort Bend.....	22,242	9,696	43.6
Freestone.....	7,803	3,692	47.3
Frio.....	5,084	2,117	41.5
Gaines.....	6,626	3,201	48.5
Garza.....	8,703	1,827	21.0
Goliad.....	8,295	1,541	18.6
Gonzales.....	10,768	4,545	42.2
Gray.....	13,710	8,650	62.8
Grayson.....	46,076	19,728	42.8
Gregg.....	41,449	20,584	49.7
Grieco.....	7,738	3,247	42.0
Guadalupe.....	16,606	7,806	46.9
Hale.....	20,046	9,894	49.4
Hardeman.....	5,229	2,532	48.4
Harrison.....	26,281	11,930	45.4
Haskell.....	6,875	3,421	49.8
Hays.....	11,611	5,064	43.6
Henderson.....	13,521	6,714	49.6
Hidalgo.....	87,533	33,786	38.6
Hill.....	16,660	6,695	40.2
Hockley.....	11,867	5,753	48.5
Hopkins.....	13,326	5,651	42.4
Houston.....	12,247	5,366	43.8
Howard.....	23,028	9,367	40.7
Hudspeth.....	1,815	685	37.8
Hunt.....	24,788	9,679	39.1
Jasper.....	12,640	5,537	43.8

Texas--Continued

	Voting age population	Voted in 1964 for President	Percent voting
Other counties--Continued			
Johnson	21,823	9,642	44.2
Jones	12,046	4,920	40.8
Kaufman	19,048	8,694	35.1
Kenedy	435	146	33.6
Kerr	11,641	5,608	48.0
Kinney	1,429	594	41.6
Kieberg	15,403	8,230	40.4
Knox	4,799	2,218	46.2
Lamar	21,018	8,905	40.6
La Salle	3,063	1,212	39.6
Lavaca	12,732	5,617	43.3
Leon	6,188	3,022	49.0
Liberty	15,012	8,257	45.8
Limestone	13,307	5,263	39.6
Lubbock	84,831	39,468	46.6
McCulloch	5,745	2,761	48.0
McLennan	91,322	39,346	43.1
Madison	4,395	1,945	44.2
Marlon	4,681	2,308	49.2
Martin	2,798	1,297	46.8
Matagorda	14,344	6,555	45.7
Maverick	7,164	2,661	37.1
Medina	10,214	4,992	48.9
Milam	13,806	5,709	41.3
Mitchell	8,610	3,159	36.6
Montague	10,018	4,856	48.5
Morris	7,206	3,694	51.3
Nacogdoches	16,956	7,519	44.4
Navarro	21,909	8,958	40.9
Nolan	11,476	5,182	45.0
Nueces	115,687	54,658	47.1
Orange	32,706	15,646	47.8
Palo Pinto	12,853	5,641	43.1
Polk	8,162	3,700	45.4
Potter	65,081	24,419	37.5
Reagan	2,106	1,022	48.6
Red River	9,918	4,654	46.9
Reeves	9,237	3,695	39.9
Robertson	9,536	4,247	44.8
Rockwall	3,534	1,755	49.7
Runnels	9,146	4,132	45.2
San Augustine	4,439	1,940	43.7
San Patricio	22,226	9,384	42.2
Scurry	11,443	5,137	44.9
Shelby	12,463	5,711	45.7
Smith	61,573	26,473	43.0
Bomervell	1,772	854	48.2
Stephens	5,973	2,874	48.1
Sutton	2,125	1,051	49.4
Taylor	68,166	22,820	33.5
Terrell	1,476	668	45.2
Titus	10,514	5,219	49.6
Tom Green	37,897	16,443	43.4
Tyler	6,266	3,037	48.3
Upton	3,379	1,604	47.5
Uvalde	9,255	4,326	46.7
Val Verde	12,923	4,902	37.9
Van Zandt	12,404	5,676	45.7
Victoria	26,285	12,337	46.9
Walker	18,435	4,436	24.0
Waller	5,685	3,149	55.4
Ward	8,191	3,954	48.3
Washington	12,186	4,962	40.7
Webb	32,096	11,182	34.8
Wharton	21,117	9,020	42.7
Wichita	72,087	27,780	38.5
Willbarger	11,302	4,742	41.9
Willacy	9,443	3,358	35.6
Williamson	21,248	9,202	43.3
Winkler	7,884	3,670	46.6
Wise	10,698	5,241	49.0
Wood	11,403	5,606	49.2
Young	11,040	4,996	45.2
Zapata	2,325	1,147	49.3
Zavala	5,964	2,385	40.0

Senator ERVIN. Now the State of Kentucky voted as a State only a little bit more than North Carolina, 52.9 percent as against 51.8 percent

Attorney General KATZENBACH. I have 54 on my records.

Senator ERVIN. This is the Congressional Quarterly figure that I am taking. There are 13 counties in the State of Kentucky which voted less than 50 percent, included among all counties is Hardin, and yet these people can still operate their own affairs in the election field, and North Carolina cannot.

I think this is—

Attorney General KATZENBACH. Senator, you do not believe that those counties in North Carolina have discriminated, if I understand your questions, and I am confident, as I am sure you are, if that can be shown they will be permitted to operate their own affairs.

Senator ERVIN. I asked you yesterday or the day before whether you had any present evidence they were violating the 15th amendment and the only county that you could suggest that had been was Halifax.

Attorney General KATZENBACH. Yes.

Senator ERVIN. And you referred to the case of Alston against Butts. Alston against Butts shows that a preliminary injunction was issued on the 14th day of May 1964, and that only 12 days later; namely, on the 26th day of May 1964, that the whole case was dismissed because North Carolina election officials had complied with all the demands of the petitioners in the meantime.

Attorney General KATZENBACH. Yes.

Senator ERVIN. And certainly if North Carolina will comply that quickly in election laws pertaining to the registration of people, I do not think that they ought to have a bill passed saying that they are unworthy, *prima facie* at least, to be allowed the right of self-government in respect to elections, although that right is secured to them by the Constitution of the United States.

Put that whole case in, Mr. Reporter.

(The case referred to follows:)

ELECTIONS--REGISTRATION--NORTH CAROLINA (HALIFAX COUNTY)

WILLIAM ALSTON, ET AL. v. L. M. BUTTS, ET AL.

United States District Court, Eastern District, North Carolina, Wilson Division, Civil No. 875, May 8, 14 and 26, 1964, ---F. Supp.---

Summary.—Negro voters brought suit in a federal district court against precinct registrars of voting of Halifax County, North Carolina, charging discriminatory practices which allegedly denied Negroes the opportunity to register and vote. On the basis of affidavits, a temporary restraining order was issued requiring defendants to refrain from spending more time qualifying Negro applicants than white applicants and to limit to five minutes the time used for qualifying any applicant for registration. The court also ordered that when three or more applicants were in line, defendants must permit three of them to be processed for registration at the same time, and that whenever it appeared that waiting time to register would be more than thirty minutes, assistant registrars must be designated. Defendants were also directed to give public notice indicating where applicants might register during the following week at convenient places in each precinct. Subsequently, on hearing on plaintiffs' motion for a preliminary injunction, it was noted that there had been substantial compliance with the restraining order, but that the five-minute limit on registration was likely to cause hardship to certain applicants. The court therefore enjoined defendants from spending more time qualifying Negro applicants than white applicants, and added that the time limit of five minutes could be used as a guide, but that reasonable extensions should be granted to

applicants. The court again ordered that three applicants be processed for registration at the same time whenever lines formed, and directed that defendants register all qualified applicants in accordance with a designated provision of North Carolina law. Approximately two weeks later, a motion to dissolve the preliminary injunction was granted, on the basis of an affidavit that no complaints had been filed or dissatisfaction observed concerning the subject matter of the suit.

LARKINS, District Judge.

ORDER

This matter having come on to be heard upon plaintiffs' motion for an interlocutory injunction and for a temporary restraining order, supported by affidavits and it appearing to the court that defendants have been engaging and continue to engage in a course of conduct which discriminatorily deprives Negroes in Halifax County, North Carolina, of an opportunity to register to vote causing immediate and irreparable injury, loss and damage to the plaintiffs, and it further appearing that a temporary restraining order restraining such acts should be granted without notice or hearing in view of the shortness of time in which registration is permissible under North Carolina law;

It is therefore ordered that the defendants, precinct registrar, their agents, servants and employees and persons acting in concert with them are hereby temporarily restrained from directly or indirectly adopting and pursuing a course of conduct by which more time qualifying Negro applicants for registration is spent than is the case with White applicants, and in any event barring any defendant precinct registrar from spending more than 5 minutes qualifying any applicant for registration, and

It further ordered that the said defendant precinct registrars, their agents, servants and employees and persons acting in concert with them are temporarily ordered;

(a) Whenever it appears that applicants to register are in line, to permit three applicants to be processed for registration at the same time.

(b) To give immediate notice of a public nature of the places where applicants may register to vote on week days other than Saturday and Sunday up to and including May 16, 1964, such places to be a place other than the residence of the registrar to be fixed with the approval of the County Board of Elections and to be at a place convenient to the electorate in such precinct.

It is further ordered that the defendants, members of the County Board of Elections, their agents, servants and employees and persons acting in concert with them are temporarily ordered to designate one or more assistant registrars to register applicants to vote, whenever it shall appear that the waiting time to register is more than 80 minutes.

It is further ordered that plaintiffs' motion for preliminary injunction be, and set for hearing in this court on May 13th, 1964, at 4:00 o'clock P.M.

It is further ordered that the above and foregoing order shall expire on May 14, 1964, unless it is further extended by order of the Court.

Dated this 8th day of May, 1964, at 6:00 o'clock P.M.

PRELIMINARY INJUNCTION

This matter came on to be heard on plaintiff's motion for a preliminary injunction, supported by affidavits, and the Court having heard oral arguments on behalf of plaintiffs and defendants on the order to show cause issued by this Court on May 8, 1964, and it appearing to the Court that prior to May 8, 1964, due to slowness of registration, plaintiffs and other persons similarly situated, were unable to register to vote in Halifax County and were thereby deprived of their constitutional rights, and that on May 8, 1964, the undersigned issued a temporary restraining order requiring certain acts to be performed and it appearing to the Court that there has been substantial compliance with said order; and, it further appearing to the Court that the requirement of said order of May 8, 1964, with respect to a five minute limit of registration of each applicant is likely to cause hardship in certain cases, it is hereupon

ORDERED that the defendant precinct registrars, their agents, servants, employees, and successors, and persons acting in concert with them are, pending the final hearing in this matter, be restrained and enjoined from directly or indirectly adopting a course of action by which more time qualifying Negro applicants for registration is spent than is the case with white applicants; and

it is further ordered that the defendant precinct registrars register all qualified applicants in accordance with Chapter 163, Article 6, of the General Statutes of North Carolina, provided that the time limit of five minutes for registering each applicant shall be used as a guide and that a reasonable extension will be granted each applicant.

It is further ordered that the defendant precinct registrars, their agents, servants, and successors, and all persons acting in concert with them, are temporarily ordered, whenever it appears that applicants to register are in line, to permit three applicants to be processed for registration at the same time.

This order shall remain in effect pending further orders of this Court.

Done in the City of Raleigh, North Carolina, on the 14th day of May, 1964.

ORDER

This cause again came on to be heard before the Honorable John D. Larkins Jr., United States District Judge, upon motion for dissolution of Preliminary Injunction heretofore entered in this cause and it appearing to and being as a fact by the Court from the affidavits of Robert C. Shields that no complaints have been filed and no dissatisfaction observed touching upon the subject matter of this action, and, that the terms of the Preliminary Injunction have been complied with, it is therefore

ORDERED that the Preliminary Injunction heretofore entered in this cause be, and the same is hereby, dissolved.

Done in Wilson, North Carolina, this 26th day of May, 1964.

Senator ERVIN. Mr. Attorney General, I thank you. I have some more things to put in the record. I won't detain you on account of that, and I will put them in at the next time.

Attorney General KATZENBACH. Senator, I believe that, my recollection is, the record will show the other day that I had permission of the Chair to put in additional statistical information, and I wonder whether—other materials in the record, and I wonder if—is my recollection correct on that?

Senator ERVIN. Unless Senator Hart objects, I will enter an order here that you can put in other statistical material.

Attorney General KATZENBACH. And other materials; yes.

Senator ERVIN. And other materials.

Attorney General KATZENBACH. Thank you, Senator.

(See contents page for locating above information.)

Senator ERVIN. I have a good deal to put in, but I have finished with my examination of you. I'm sorry I had to detain you so long. I still have not explored what I consider to be some of the inequities of this bill. I will save those for future days when you will not be present.

Attorney General KATZENBACH. Thank you.

Senator ERVIN. I want to thank you for your extreme courtesy throughout the hearing, and express again my thought that while I am deeply grateful to you, I cannot refrain from expressing my regret that you do not share the same sound opinions I have with respect to this bill.

Attorney General KATZENBACH. Thank you, Senator. May I thank you for all of your courtesy and express the same regret.

Senator HART. Mr. Chairman, just two points. Mr. Attorney General, you have been examined carefully by all those on the committee who desired to question you with respect to the bill that the administration offers. This has covered a 3-day period?

Senator ERVIN. Three.

Senator HARR. Three-day period. A number of questions have been directed at the constitutionality of the bill. Additional comments have been made with respect to the constitutionality.

At the outset you advised the committee that you were confident that the bill as offered is constitutional. At the end of these 3 days has that opinion of yours been strengthened or weakened?

Attorney General KATZENBACH. I think if anything it has been strengthened, Senator, because under such rigorous and learned cross examination as I have had on this point, my convictions remain the same, and I have confidence in the constitutionality of the bill.

Senator HARR. Then the last is a comment not a question. As one who has felt the bill was sound, none the less I think that the record should reflect that even those of us who feel confident that the bill is a good response to a very compelling public need, that the timetable by the Senator from North Carolina particularly, and by others, has been spent usefully, and I make for the record the comment that no minute that was used in the examination of the Attorney General by any member of the committee and, particularly, the Senator from North Carolina, was dilatory or served other than a very useful purpose.

I know that speculative columns appear occasionally with respect to this. I feel very deeply that the examination by the Senator from North Carolina has contributed materially to a fully understanding and a more useful record.

Attorney General KATZENBACH. I agree with you, Senator.

Senator ERVIN. I appreciate the remarks of the Senator from Michigan very much.

Someone asked me since they had so many cosponsors on this bill why I tried to fight for what I conceived to be the perpetuation of constitutional government, and I said because I read in the second verse of the 23d chapter of Exodus, "Thou shall not follow a multitude to do evil."

I certainly appreciate your gracious remarks and those of the Attorney General.

Attorney General KATZENBACH. May I add, Mr. Chairman, I am, if the committee wishes me again for any purpose, always available to the committee.

Senator ERVIN. Well, you will not have to come back unless you are notified.

I am informed they are unable to get a quorum to do much work tomorrow and, therefore, I am directed by the chairman to let the committee take a recess until 10:30 a.m., Monday.

(Whereupon, at 5:15 p.m., a recess was taken until 10:30 a.m., Monday, March 29, 1965.)

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., April 2, 1965.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate,
Washington, D.C.

DEAR SENATOR EASTLAND: During the course of my recent testimony on S. 1564 before the Judiciary Committee, I agreed to submit memorandums on a number of subjects. In addition, I was granted permission to include in the record of the hearings whatever additional supporting material I thought would

be helpful to the committee. Accordingly, I am enclosing the following materials for insertion in the record:

1. A report prepared by the Civil Service Commission describing the status under the civil service and similar laws of examiners who would be appointed pursuant to section 4 of S. 1564.

2. A table indicating State voting qualifications in effect at the time the 15th amendment was adopted.

3. A commentary on S. 1517, introduced by Senator Douglas and nine other Senators.

4. A compilation of prosecutions brought by the Department of Justice under 18 U.S.C. 241 and 242, indicating their geographical distribution.

5. The 1964 status report of the Civil Rights Division of the Department of Justice. This document describes the status as of December 31, 1964, of every lawsuit brought by the Department under the Civil Rights Acts of 1957, 1960, and 1964, and also summarizes voting discrimination investigations.

6. Documents containing comparative analyses of the educational facilities afforded to Negroes and whites in the States of Mississippi and Louisiana, and in Sumter County, Ala. The Mississippi material consists of answers to interrogatories submitted by the Department in *United States v. Mississippi* (C.A. No. 3312, S.D. Miss.). The Louisiana material is an extract from the Department's brief filed in *United States v. Board of Registration of Louisiana* (C.A. No. 2866, E.D. La.). The Sumter County analysis is a portion of the Department's brief filed in *United States v. Hines* (C.A. 63-609, N.D. Ala.). The Department is presently preparing a comprehensive study on the entire State of Alabama which I hope to be able to submit to Congress in the near future.

7. A compendium of various tables of statistics and other data relating to S. 1564. Included is an analysis of the tables and an explanation of how they support the formula prescribed by section 3(a) of the bill.

If the committee would like me to supply any additional material for inclusion in the record, I will be happy to do so.

Sincerely,

NICHOLAS DEB. KATZENBACH,
Attorney General.

VOTING RIGHTS

MONDAY, MARCH 29, 1965

U.S. SENATE, COMMITTEE ON THE JUDICIARY, Washington, D.C.

The committee met, pursuant to recess, at 10:47 a.m., in room 2228, New Senate Office Building, Senator James O. Eastland (chairman) presiding.

Present: Senators Eastland, Ervin, Hart, Kennedy of Massachusetts, Dirksen, Hruska, and Fong.

Also present: Palmer Lipscomb, Robert B. Young, Thomas B. Collins, professional staff members of the committee.

The CHAIRMAN. The committee will come to order. Gentlemen, the witness this morning is the Honorable Charles Bloch of Macon. Mr. Bloch is one of the greatest lawyers in this country, and we are privileged to get his views on this bill. Do you desire him to read his statement? I am going to order this whole statement in the record. It is very fine. Do the members want him to discuss the bill?

Senator DIRKSEN. What is Mr. Bloch's preference?

STATEMENT OF CHARLES BLOCH, ATTORNEY, MACON, GA.

Mr. BLOCH. Shall I proceed?

Senator DIRKSEN. Why not have him proceed.

The CHAIRMAN. Will you read your statement?

Mr. BLOCH. Mr. Chairman, Senators, since 1957 I have had the honor and privilege of appearing several times before the Judiciary Committee on subjects kindred to that of this bill.

During those years the personnel of the committee has changed considerably. Therefore, it may not be amiss for me to tell the committee that I was admitted to the bar in Macon, Ga., in 1914. I have practiced law there consecutively since. The firm of which I am now senior member is a direct successor to that with which I commenced "reading law" 52 years ago. During those years, I have held every office in the Georgia Bar Association, including the presidency. I have been chairman of the Judicial Council of Georgia, and am now chairman of the rules committee of the Supreme Court of Georgia. At one time I was chairman of the American Bar Association's Committee on Judicial Selection, Tenure, and Compensation, and at other times, a member of its committees on jurisprudence and law reform, and on the Federal judiciary.

(At this point in the proceedings, Senator Fong entered the hearing room.)

Mr. BLOCH. I am a member of the American College of Trial Lawyers, and of the American Bar Foundation. And by appointment of

Senator Talmadge when he was Governor of Georgia, for 7 years I was member of the board of regents from the University of Georgia.

I tell you this personal history so that those of you who are personally strangers to me will know that I would not without serious study and consideration express to you the opinion which I shall today express.

Over the years, I have had the opportunity to study academically the subject matter of these bills—have also had the opportunity of trying cases involving a great many of the principles here involved.

When the Congress enacted the civil rights bill of 1957, I was of counsel for those who attacked it as unconstitutional. The District Court for the Middle District of Georgia, Judge T. Hoyt Davis, declared it unconstitutional (172 F. Supp. 552). The Government appealed directly. The case was argued before the Supreme Court by Attorney General Rogers and me, on opposite sides. That case, sub nomine *United States v. Raines* (262 U.S. 17), was mentioned by Attorney General Katzenbach in his appearance before the House committee on March 18, 1965. The Supreme Court of the United States reversed Judge Davis as to the vital point there at issue, to wit: the proper application of *United States v. Reese* (92 U.S. 214). The Court refused to follow Judge Davis' construction of the *Reese* case.

It is noteworthy that last June in the *Aptheker* case (84 S. Ct. 1661 (20)) (378 U.S. 500) a majority of the Court speaking through Mr. Justice Goldberg held that in appraising a statute's inhibitory effect upon personal liberties, the court can take into account possible applications of the statute in other factual contexts besides the ones at issue in the cases at bar. Therefore, a section of the Subversive Activities Control Act making it a felony for a member of a Communist organization to apply for, use, or attempt to use a passport is unconstitutional on its face.

I also had the honor and privilege of representing the chairman of the Democratic Committee of Georgia, John Sammons Bell, now a judge of the Georgia Court of Appeals, the last time Georgia was successful before the Supreme Court of the United States in resisting an attack on her nominating system known as the county unit system. *Hartsfield v. Sloan* (357 U.S. 916).

Then, questions of that nature were still considered to be political questions. The Court had not entered the political thicket.

I am here to express my opinion for what it may be worth to you on the validity, as a matter of law, of the bill before you. I shall endeavor to support that opinion by established principles of constitutional law—which, we are told, should be the "law of the land."

Were I a judge, I would attempt to approach the questions involved bearing in mind the views expressed by the late Justice Frankfurter in *West Virginia State Board of Education v. Barnette* (319 U.S. at pp. 646-647):

One who belongs to the most vilified and persecuted minority in history is not likely to be insensible to the freedoms guaranteed by our Constitution. Were my purely personal attitude relevant I should wholeheartedly associate myself with the general libertarian views in the Court's opinion, representing as they do the thought and action of a lifetime. But as judges we are neither Jew nor Gentile, neither Catholic or agnostic. We owe equal attachment to the Constitution and are equally bound by our judicial obligations whether we derive our citizenship from the earliest or the latest immigrants to these shores. As a member of this

Court, I am not justified in writing my private notions of policy into the Constitution, no matter how deeply I may cherish them or how mischievous I may deem their disregard.

It occurs to me that you and I must approach the problems from that same standpoint. You, as Senators; I, as a lawyer, took substantially the same oath, to uphold and defend the Constitution of the United States.

As a member of the same faith as the late Justice, I have this personal interest, too. Over the years, I have struggled against stretching and distortions of our Constitution. I sincerely believe that the only hope any American, certainly any minority, has for survival is in strict construction of and obedience to our written Constitution. If, today, those in power can stretch and distort the Constitution favorably to a minority, tomorrow, another and adverse group risen to power, can stretch and distort it to destroy that minority.

So—is not the first basic problem for us to decide whether or not in all respects this bill squares with the 15th amendment?

That amendment is:

1. The right of the citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

2. The Congress shall have power to enforce this article by appropriate legislation.

The sole power given to Congress by that amendment, the only appropriate legislation which can be enacted pursuant to it, is to prevent the United States or any State from denying certain people the right to vote on account of their race or color.

I interpolate to make perfectly clear what I mean there, that the Court has held, and held it in the *Raines* case, that discrimination by State officers panoplied with State power within the course of their official duties is discrimination of the State on grounds of race and color. The Supreme Court held that in the *Raines* case, distinguishing the old *Barnette* case in the 193d U.S.

That amendment does not confer the right upon Congress to confer upon anyone the right to vote.

The 15th amendment was declared ratified March 30, 1870; the 14th had been declared ratified July 28, 1868. The 14th contained a provision:

No state shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States * * *

At that time the constitution of the State of Missouri provided:

Every male citizen of the United States shall be entitled to vote.

On October 15, 1872, Mrs. Virginia Minor, a native born, free, white citizen of the United States and of Missouri, over the age of 21, wishing to vote for presidential electors, sought to register to vote. Being denied that privilege, she brought legal action contending that the Missouri laws confining the right of suffrage to men were void. The argument was that as Mrs. Minor was a citizen, she had the right of suffrage as one of the privileges and immunities of citizenship which the State could not deny.

In deciding against Mrs. Minor, the Court held that all citizens are not necessarily voters; the United States has no voters in the States of its own creation; the elective officers of the United States

are all elected directly or indirectly by State voters; the Members of the House of Representatives are chosen by the people of the States, and the electors—synonymous with voters—in each State must have the qualifications requisite for electors of the most numerous branch of the State legislature. (Constitution, art. I, sec. 2.)

Minor v. Happersett, 88 U.S. (21 Wallace) 162, 170-1:

Then, as now, no citizen regardless of sex or color has any right under the Constitution of the United States to vote for electors who, in turn, elect the President and Vice President. Each State, under the Constitution (art. II, sec. 2) must appoint those electors in such manner as the legislature thereof may direct (*ibid.*, p. 171).

On page 171, the Court, speaking through Mr. Chief Justice Waite, used this cogent language:

It is clear, therefore, we think that the Constitution has not added the right of suffrage to the privileges and immunities as they existed at the time it was adopted.

All that was said with respect to the 14th amendment.

The impact of it here is that when the 15th amendment was adopted, it did not deprive the States of their constitutional power to determine who had the "right to vote" under article I, paragraph 2, or any other provision of the Constitution. It simply prevents the States from using the laws it passes so as to deny or abridge the colored person's right to vote. It does not empower the Congress to supersede those laws by enacting statutes to replace them when the State statutes are used to abridge or deny.

As *Minor v. Happersett* (at p. 173) clearly points out in some detail, when the Federal Constitution was adopted, in no State were all citizens permitted to vote.

Each State determined for itself who should have that power.

To illustrate, at the time of the adoption of the Constitution the law of Connecticut was that to be a voter a person had to be one who had "maturity in years, quite and peaceable behavior, a civil conversation, and 40 shillings freehold or 40 pounds personal estate"—88 U.S. at page 172—New York's of that day is equally interesting—in the same place.

Suppose that were still the law of Connecticut, and suppose it were so administered by the State's officers as to violate the 15th amendment, so as to deprive a person of his right to vote by reason of his race or color, do you for 1 minute think that the Congress would have the constitutional power to wipe that law off of the statute books of Connecticut, and substitute its own notions of what Connecticut citizens had the right to vote?

The 15th amendment was simply not intended to confer upon the Congress the power to enact as "appropriate legislation" legislation determining the qualifications of voters in any State, or group of States, regardless of whether or not that State or those States had violated the 15th amendment. The Federal courts can prevent such violation. Neither the Congress nor the courts can enact laws to replace the offending laws.

Every case on the subject decided from 1870 to this date teaches the correctness of that statement.

The power of Congress to legislate at all upon the subject of voting at State elections rests upon the 15th amendment. It does not confer the right of suffrage; but it invests citizens of the United States with the right of exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude, and empowers Congress to enforce that right by appropriate legislation.

Portions of an act of May 31, 1870, not being confined in their operation to such unlawful discrimination were held to be beyond the limit of the 15th amendment, and unauthorized.

United States v. Reese, et al., 92 U.S. 214 (1875) :

In *Minor v. Happersett*, 21 Wallace 178, this Court decided that the Constitution * * * has not conferred the right of suffrage upon anyone, and that the United States have (sic) no voters of their (sic) own creation in the States. In *United States v. Reese, et al.*, supra, p. 214, it held that the 15th amendment has invested the citizens of the United States with a new constitutional right, which is exemption from discrimination in the exercise of the elective franchise on account of race, color, or previous condition of servitude. The right to vote in the States comes from the States; but the right of exemption from the prohibited discrimination comes from the United States. The first has not been granted or secured by the Constitution of the United States, but the last has been.

United States v. Cruikshank, 92 U.S. 542, the *Ku Klux Klan* case; it went up from the Northern District of Georgia directly to the Supreme Court of the United States.

Even a territory (Idaho) in 1890 had the right through its territorial legislature to provide that no person who taught or advised bigamy or polygamy, or to enter into plural or celestial marriage, or who was a member of any order or organization which so taught should be permitted to vote.

Davis v. Beason, 133 U.S. 338 (1890) :

Under the second clause of article II of the Constitution, the legislatures of the several States have exclusive power to direct the manner in which the electors of President or Vice President shall be appointed. Such appointment may be made by the legislatures directly, or by popular vote in districts, or by general ticket, as may be provided by the legislature. * * * The second clause of article II of the Constitution was not amended by the 14th and 15th amendments, and they do not limit the power of appointment to the particular manner pursued at the time of the adoption of these amendments, or secure to every male inhabitant of a State, being a citizen of the United States, the right from the time of his majority to vote for presidential electors.

McPherson v. Blacker, 146 U.S. 1 (1892) :

The Constitution "recognizes that the people act through their representatives in the legislature, and leaves it to the legislature exclusively to define the method of effecting the object" (of appointing electors). *Ibid*, page 27.

The doctrine of *Cruikshank* and *Reese* was explicitly reaffirmed. *Ibid*, p. 38.

Guin and Beal v. United States, 238 U.S. 347 (1915) was decided by a Court over which Chief Justice White presided. Among his Associates were Justices Oliver Wendell Holmes, William R. Day of Ohio, Charles Evans Hughes of New York, Mahlon Pitney of New Jersey.

This case should be most carefully considered because of it, and its companion, *Myers v. Anderson*, 238 U.S. 368, the Attorney General stated before the House committee on March 18 last :

The "grandfather clauses" of Oklahoma and Maryland were, of course, voting qualifications. Yet they had to bow before the 15th amendment (manuscript, p. 39).

That is a correct statement. They did have to bow before the 15th amendment, but the question is to what extent did the provisions of the Oklahoma constitution have to "bow"? They had to "bow" to the extent of being eliminated, but it was not even contended by the United States that the Congress of the United States could enact something in their stead. (See 238 U.S. at p. 351.) The language of the Court clearly indicates that no such power would have been implied from the words of the 15th amendment.

That language is this:

The 15th amendment does not, in a general sense, take from the States the power over suffrage possessed by the States from the beginning, but it does restrict the power of the United States or the States to abridge or deny the right of a citizen of the United States to vote on account of race, color, or previous condition of servitude. While the 15th amendment gives no right of suffrage, as its command is self-executing, rights of suffrage may be enjoyed by reason of the striking out of discriminations against the exercise of the right (op. cit. p. 347).

What the court did there was to nullify the grandfather clause (h.n. 1) and to declare that ipso facto the 15th amendment had stricken the word "white" from the phrase "white male citizen" in the Oklahoma law.

In so doing (op. cit., p. 363) the Court followed much older cases: *Ex parte Yarbrough*, 110 U.S. 651, 665—I think I referred to the *Cruikshank* case a while ago as being the *Ku Klux* case. The *Yarbrough* case is the one that went up from the Northern District of Georgia. The *Cruikshank* case went up to Louisiana.

Neal v. Delaware, 103 U.S. 370 (1880):

In 1959, *Guin*, as well as *Pope v. Williams*, 193 U.S. 621, *Mason v. Missouri*, 179 U.S. 328, were cited in support of the propositions that a State—

may * * * apply a literacy test to all voters irrespective of race or color and that the States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised.

Lassiter v. Northampton County Board of Elections, 360 U.S. 45, 50: In that case, Justice Douglas writing for a unanimous court said:

So while the right of suffrage is established and guaranteed by the Constitution * * * it is subject to the imposition of State standards which are not discriminatory and which do not contravene any restriction that Congress acting pursuant to its constitutional powers has imposed (op. cit. p. 51).

The theory of this bill and of the Attorney General who presents it is that if in the opinion of Congress a State imposes standards which are discriminatory, or applies legal standards (test and devices) discriminatorily, Congress may, by statute, divest that State of its constitutional power of determining the conditions upon which the right of suffrage may be exercised; may substitute its own conditions, and may do all of that retroactively.

The Constitution gives the Congress no such power over any State of this Union, North or South, East or West, Republican or Democrat.

The Attorney General at page 39 of the manuscript of his testimony before the House correctly quotes from Justice Frankfurter's opinion in *Gomillion v. Lightfoot*, 364 U.S. 339, 347.

From that case, too, it appears that the Court decided that if a local act of the Alabama Legislature redefining the corporate bound-

ary of Tuskegee had as its purpose the removing from that city all but 4 or 5 of its 400 Negro voters while not removing a single white voter or resident, with the result of depriving such Negroes of benefits of residence in the city including the right to vote in municipal elections, such act would be void as violative of the 15th amendment.

If that act, or any act like it, were found to be void, would it follow that Congress could, therefore, deprive the Alabama Legislature of all future power to create municipal corporations?

If such be the law, then Congress, under the guise of enforcing the 14th and 15th amendments, has power to strip any State legislature—not merely the State legislatures of the Southern States but any State legislature—of every vestige of its legislative power.

If, for example, a statute defining and punishing murder should be so administered so as, in the opinion of Congress, to deprive certain groups of the equal protection of the laws, then, if the theory of this bill is correct, Congress would have the right not only to nullify that statute but to enact one to supplant it, and send Federal officers or agents into the State to enforce it. And if the Congress has that right, I interpolate, with reference to criminal laws, it has the right with respect to juries, civil and criminal; it has the right with respect to education; it has the right with respect to taxation, because if the theory of this bill is correct, if any State—not merely a Southern State, now; the State of Illinois, if you please, or the State of New York or Massachusetts or Michigan—if one of those States should enact a tax law which was discriminatorily applied so as to deny someone within the State the equal protection of the laws, if the theory of this bill is correct, then Congress would have the right not only to nullify that discrimination, but to say to that legislature, "You cannot enact any more tax laws until you prove that you are not going to discriminate against people in the enforcement of it."

Now, let us follow through on that some.

(At this point in the proceedings, Senator Hruska entered the hearing room.)

Mr. BLOCH. Nothing in any case ever decided by the Supreme Court of the United States even hints at any such power which, if it exists, would place it in the power of the Federal Government to destroy the States which created the Federal Government.

The three most recent cases cited by the Attorney General are *Alabama v. United States*, 371 U.S. 87; *United States v. Mississippi*, 38 L.W. 4258 (Mar. 8, 1965); *Louisiana v. United States*, 38 L.W. 4262 (Mar. 8, 1965).

The *Alabama* case is a per curiam case based on *United States v. Thomas*, 362 U.S. 58, which simply followed and applied the *Raines* case, supra.

Nothing in the *Mississippi* case, supra, or the *Louisiana* case, supra, even hint at such a power in Congress, impliedly conferred by the 15th amendment.

Even if there were direct, uncontradicted proof that the election officials were under direct State authority purposely and universally using valid literacy tests—tests and devices—to deny the right of Negroes to vote, such would not authorize the Congress to annul those valid literacy tests and enact laws supplanting the State's laws, or even to annul those valid literacy tests.

A fortiori, Congress has no such power when the so-called guilt of a State or subdivision is based on a presumption or presumptions. And even the more strongly, Congress has no such power when the presumptions are based on conclusions reached by the application of an arbitrary percentage which is a part of such presumption to an arbitrary past date.

In the first place such a method of procedure is violative of article I, section 9, paragraph 3 of the Constitution which provides:

No Bill of Attainder or ex post facto Law shall be passed.

Legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial are "bills of attainder" prohibited by this clause of the Constitution.

United States v. Lovett, 328 U.S. 303:

A bill of attainder is defined to be "a legislative act which inflicts punishment without judicial trial" where the legislative body exercises the office of judge, and assumes judicial magistracy, and pronounces on the guilt of a party without any of the forms or safeguards of a trial and fixes the punishment."

In re De Giacomo, 7 Fed. Cases No. 3747:

See: *Cummings v. Missouri*, 4 Wallace 277; 323; *Ex parte Garland*, 4 Wallace 333.

(At this point in the proceedings, Senator Ervin entered the hearing room.)

Mr. BLOCH. In the *Cummings* case, it was held that a State, under the form of creating a qualification or attaching a condition, could not in effect inflict a punishment for a past act which was not punishable at the time it was committed. Deprivation or suspension of any civil rights for past conduct is punishment for such conduct. There a Missouri statute, which sought to bar Rev. Mr. Cummings, a priest of the Roman Catholic Church, from teaching and preaching by reason of his past allegiance to the Confederacy, was declared invalid.

In *Ex parte Garland*, supra, the Court said:

Exclusion from the practice of law in the Federal courts, or from any of the ordinary avocations of life for past conduct is punishment for such conduct. * * * The act being of this character partakes of the nature of a bill of pains and penalties, and is subject to the constitutional inhibition against the passage of bills of attainder. * * *

The Garland of that case decided in 1866 was A. H. Garland, Esq.—a lawyer of Arkansas—who afterward (1885–89) became an Attorney General of the United States under President Cleveland.

An ex post facto law is one which imposes a punishment for an act which was not punishable at the time it was committed, or a punishment in addition to that then prescribed.

Burgess v. Salmon, 97 U.S. 384:

See also *U.S. v. Trans-Missouri Freight Association*, 166 U.S. 290.

I am glad to see that Senator Ervin came in just at this time because I happened to notice in the New York Times this morning that a columnist—I believe it is on page 28 of the New York Times of this morning—disagrees with Senator Ervin's opinion of law that this is an ex post facto law. If it is any comfort to Senator Ervin, I agree with him.

Senator ERVIN. I think I can truthfully say that up to the present moment the Supreme Court of the United States does also in the *Ex parte Garland*, *Ex parte Cummings*, and also in the *Lovett* case.

Mr. BLOCH. Yes, sir; and *Burgess v. Salmon*, 97 U.S. and *United States v. Trans-Missouri Freight Association*.

I did notice this in that column, if I may interpolate. It was of some interest to me that the writer said that all that the bill tried to do was to seek to correct violations of law in the Constitution that has existed for nearly a century. Why whenever I read anything like that, I just have to take the opportunity of saying something in opposition to it. When we are accused of violating the law for a period of a century, I wonder if the man who wrote that—I wonder if people who write things like that realize that what we did in the South over a period from the time that the 14th amendment was adopted in 1868; up until 1954, a period of almost a century, what we did was to follow the law. We did not make the law. The separate-but-equal doctrine was not pronounced by the courts of the South. The separate-but-equal doctrine did not originate in the South. The separate-but-equal doctrine originated in the State of Massachusetts, even before the 14th amendment was decided, in 1845, before the 14th amendment was adopted, I mean. The Supreme Judicial Court of Massachusetts in the case of *Roberts v. Boston*, construing a similar provision in the Massachusetts Constitution, was the originator of the separate-but-equal doctrine. And after the 14th amendment was adopted, the separate-but-equal doctrine did not originate in *Plessey v. Ferguson* in the 183d U.S. in 1896. The separate-but-equal doctrine originated in Indiana in the case of *Corey v. Carter*, and in Ohio in the *McGan* case, and in New York. That is where the separate-but-equal doctrine originated, and in California in *Ward v. Flood*, and those cases decided over a period of time 1870 or 1872 up until 1900 were the progenitors of *Plessey v. Ferguson*, and we in the South followed the law, the law of the land as it was established by the Supreme Court of the United States in *Plessey v. Ferguson* in an eight to one decision, the only dissenter being the elder Justice Harlan.

We are accused of violating the 14th amendment and the 15th amendment over a period of a century. It is simply not so.

Why up until 1944 Democratic white primaries were perfectly legal and constitutional under the law of the land as decided by the Supreme Court of the United States, and that is what we are supposed to follow. We are not supposed to decide which law we will obey either. We are supposed to follow what the Supreme Court of the United States says is the law, unless a test case is to be made by agreement with somebody.

In 1935—as late as 1935, the Supreme Court of the United States held that a Democratic white primary was perfectly legal under the 14th and 15th amendment, and under the law of Texas it existed at that time. In 1944, 9 years later, without one word of the 14th amendment or the 15th amendment having been changed, but the personnel of the Court having changed somewhat, and other circumstances having changed, why the Supreme Court of the United States reversed itself and nullified the case of *Grover v. Townsend*, reversed it and removed it; and in *Smith v. Wright*, in 321 U.S., held that the Texas statutes which provided for Democratic white primaries or any other

parties' white primaries were violative of the 14th and 15th amendments, and since then Democratic white primaries have been a thing of the past. We have obeyed the law as it was pronounced by the Supreme Court.

By the same token I mentioned a while ago the county unit system. We had the county unit system in Georgia as far back as I can remember and as far back as I have read. I think the Constitution of the United States was adopted by Georgia under a legislature elected under the county unit system at that time. We had it in our nominating system purely and simply in Georgia. Four or five times people sought to nullify that county unit system. As I stated at the outset of my memorandum, I had the honor to represent the State of Georgia in one or two of those cases; I had the honor to represent the State of Georgia in the last one of them in which the Court refused to interfere with the county unit system, and by a vote of 5 to 4.

When *Gray v. Sanders* came along recently in the last 2 or 3 years and nullified the county unit system, we obeyed it, and we no longer have the county unit system in Georgia, although in a fair debate with any party, that decision could be torn to pieces because the Court absolutely overlooked the fact that *Gray v. Sanders* was nothing but a nominating system. It was not an elective system.

It was in that decision, *Gray v. Sanders*, that the phrase "one man—one vote" originated. I have often wondered why Georgia's county unit system has been nullified by the Supreme Court of the United States—a nominating system pure and simple in *Gray v. Sanders*—and yet the State of New York, for the sake of example, can nominate people, nominate officers by convention in which the one man—one vote rule does not apply.

I have digressed somewhat, but it has something to do with the general subject certainly because I resent the implication, not an implication, I resent the expression that we in the South—regardless of what State we come from, just so we are south of the river over here—we are law violators. Why, we seek to obey the law, we lawyers certainly.

Senator DIRKSEN. Mr. Bloch, may I interpose an observation?

Mr. BLOCH. If I can hear you, sir.

Senator DIRKSEN. First, let me say how glad I am to see you again, because years ago when I was a Member of the House of Representatives, we used to have frequent visits when you came to Washington, and we had opportunity to visit in the lobby of the Mayflower Hotel. I think you remember. So I am delighted to see you. I did not see the New York Times article, but I was just going to observe that with respect to *Plessey v. Ferguson*, where the separate but equal doctrine was at least sanctioned by the High Court, that was struck down 58 years later by the Supreme Court in the *Brown* case. Also in the *Tideland* case there was an unbroken line of decision in every court that I remember for a period of 100 years, but in our own time a contemporary court also struck down all those decisions.

So those things happen, and who shall say what the opinion and evaluation of the Supreme Court of the United States in the year of our Lord 1965 will be?

Mr. BLOCH. No, sir. But I am glad the Senator referred to the old days when our hair was—when mine was darker, perhaps yours was

lighter. I wonder if the Senator has ever read the *Brown* case from this standpoint. Time and time again, four or five times in the course of the *Brown* decision, the Supreme Court of the United States says in the field of public education the doctrine of separate but equal has no place. That is all that *Brown v. Topeka* decided, that is all *Brown v. Topeka* or any of its companion cases decided, that in the field of public education the doctrine of separate but equal has no place. And it bases that opinion upon the opinions of experts, psychologists, physiologists, and whatnot, who said that compulsory segregation in the public schools was harmful to the children who were segregated by public law.

I have seen no decisions of the Supreme Court of the United States, no opinion from that day to this which applies and gives reasons for the application of the theory of *Brown v. Topeka*, the public school case to golf courses, to swimming pools, and yet they are all now banned.

The separate but equal doctrine is gone with respect to all of those, because the lower Federal courts have decided that the principle of *Brown v. Topeka* applies not only to schools but to swimming pools, to bathing beaches, to bowling alleys, to restaurants, to buses, to whatnot, to anything you may think of. I have often wondered why. But I have seen no expression of opinion of the Supreme Court of the United States why.

Now, if I have overlooked something, I would certainly love to see it, because I cannot see, I have never been able to see why the rationale of the school case applied to a swimming pool or a bathing beach or a golf course. But the separate but equal doctrine is gone. It is no longer a part of the law of the land, and we recognize that.

Senator ERVIN. If I may interject now, I see this article in the New York Times written by Tom Wicker. Tom is a fine journalist. I have never heard him charged with studying such a dead science as constitutional law, so unfortunately Tom did not seem to understand what my position was. He said:

Some of the charges against this bill are constitutional. For instance, the remarkable contention of the Senator from North Carolina that the bill *ex post facto* seeks to correct violations of law in the Constitution that have existed for nearly a century.

I can say that at no time since the beginning of the world down to this moment has Senator Sam J. Ervin from North Carolina ever said that an *ex post facto* law tried to prevent violations of the law as to future violations, but he does say it is *ex post facto* to try to make something dependent on what has already happened in the past, and that is exactly what this bill does.

It says to the States and political subdivisions if you did not have registered 50 percent of your population of a voting age, or that many did not vote in November 1964, that you are guilty under this act or are assumed to be guilty, and nothing you can do in the future, nothing you can do after you pass this law, will wipe out your guilt.

If that is not *ex post facto*, it changes the rules of evidence which is another aspect of *ex post facto* law. It applies a lesser degree of evidence which would not be considered to make out a case in any court at the time the event occurred. It tries to legislate a rule of evidence to apply to something that happened in the past and says

something is going to happen in the future. If this is not *ex post facto* and not a bill of attainder, we do not have any *ex post facto* laws, do we?

MR. BLOCH. The very next part of my memorandum, Senator, applies to that. In the light of these cases, the *Garland* case, the *Cummings* case, *Burgess v. Salmon*, and of many others of like nature which could be cited, and of others which will be hereinafter cited, pass on to an examination of section 3(a) of this bill.

Senator ERVIN. In the *Cummings* case there was this hysteria that has provoked things to such an extent. The Court said in effect that they would rather for a man to go to hell than to have his soul's salvation depend upon the preaching of a man who had some sympathetic attitude toward confession.

MR. BLOCH. Yes, sir, in the *Cummings* case, as I said just before you came in, Mr. Cummings or Reverend Cummings was a Catholic priest, who was an adherent of the Confederacy during the War Between the States. The State of Missouri after the war passed a statute or put in the constitution that no one who had been an adherent of the Confederacy could teach or preach, and the Reverend Mr. Cummings did not pay any attention to it, and he was about to be punished when he sued under a writ of habeas corpus, and in the same volume there was a lawyer from Little Rock, Ark., Mr. Garland—my late senior partner knew him, served in Washington with him under the administration of President Cleveland, he called him Gus Garland, A. H. Garland; my late senior partner, or was it my late teacher, was an assistant attorney general at that time, so I learned all about the *Garland* case a long, long time ago.

Garland refused to take the oath of allegiance in 1866, and thereby was deprived of the right to practice law in the Federal courts under an act of Congress, and that act of Congress was declared unconstitutional as being an *ex post facto* law. And Mr. Garland was permitted to practice law, and not only that, but when Grover Cleveland was elected President of the United States, Gus Garland, A. H. Garland, became Attorney General. So there are such things as *ex post facto* laws.

Section 3(a) is:

No person shall be denied the right to vote in any Federal, State or local election because of his failure to comply with any test or device, in any State or in any political subdivision of a State which—

(1) the Attorney General determines maintained on November 1, 1964, any test or device as a qualification for voting, and with respect to which

(2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or

that less than 50 per centum of such persons voted in the presidential election of November 1964.

The phrase "test or device" is defined in section 3(b); the phrase is practically synonymous with what the courts have been denominating as "literacy tests," or "conditions under which the right of suffrage may be exercised."

I do not appear here for the State of Georgia. I am not an officer of the State of Georgia. Because of being practically a lifelong resident of the State of Georgia I am more familiar with the facts there than I am with those of any other State. The effect of those provi-

sions can be better understood if they are applied to a real, factual situation, so I apply them to Georgia.

We know, of course, that we do have statutes creating voting tests in Georgia such as those held to be valid in the *Northampton County* case, *supra*—which by the way was written by Mr. Justice Douglas.

We know, too, that in the Attorney General's testimony before the House committee, *supra* (p. 81) he said:

I turn now to the information we have regarding the impact of section 3(a). Tests and devices would be prohibited in Louisiana, Mississippi, Alabama, Georgia, South Carolina, Virginia, and Alaska, 84 counties in North Carolina, and 1 county in Arizona. Elsewhere, the tests and devices would remain valid, and similarly, the registration system would remain exclusively in the control of State officials.

So the United States of America would be divided into two groups, the good and the bad, if you please.

The "good"—41 States and a portion of 2 others—could go on exercising their rights and freedoms, and enforcing their statutes.

The "bad"—seven and a portion of those two others—could not.

Senator ERVIN. I have a question that goes to the heart of this formula. I do not know whether you would rather I postpone it until you finish your paper or not. I will postpone my question or ask it now about this formula.

Mr. BLOCH. Do you want to go ahead and ask the question?

Senator ERVIN. Well, if election officials in a State or county are practicing discrimination against a person in violation of the 15th amendment, does that discrimination not reflect itself in the registration rather than in the number of those who vote?

Mr. BLOCH. Yes.

Senator ERVIN. In other words, if they discriminate against a man on the basis of his race or color in violation of the 15th amendment, they deny him the right to register, do they not, but after he has once registered, he has an absolute right to vote, does he not?

Mr. BLOCH. Yes, sir.

Senator ERVIN. And the discrimination cannot be practiced by them after they have passed upon his qualifications and found him qualified and registered him. So that being so, the test about the number of people voting has no relation whatsoever to the discrimination, does it?

Mr. BLOCH. Not at all. I will develop that a little later, too.

Senator KENNEDY. Will the Senator yield? Could I ask a question if the Senator would yield?

Mr. BLOCH. Yes, sir.

Senator KENNEDY. On that very point could you not foresee the possibility of intimidation to an individual so that he might not vote and therefore the fact that he did not vote would vitally affect the formula which has been placed in this legislation?

Mr. BLOCH. I do not know if I get your question exactly, Senator, because I do not hear as well as I should even with these things on.

Senator KENNEDY. I was just asking, following the reasoning of my distinguished colleague on the question whether after a person has attained the absolute right to register that he does have the right to vote, if you could see the possibility that if an individual who was registered, and registered under State laws, might not be able to vote because—as has been alleged and as has been presented by the Attorney

General in his testimony—there could be the possibility of either, one, intimidation so that he would not have a chance to vote or, two, because of conduct at the various courthouses or the places of voting, that perhaps his vote would not be counted. In such situations these facts would be related, as I understand it, in the formula which has been derived and specified in this legislation, which relates to the number of people who voted in elections and the number of people that were registered for an election.

My only point—and I want you certainly to continue—is that I think that this is a consideration at least, it is in my mind, in evaluating whether this formula is legitimate or not legitimate.

MR. BLOCH: Whether it helps or whether it hurts, of course, I can see that a man, white or black, Jew or gentile, Catholic or Protestant, might be registered, might be permitted to register, and even after he was registered somebody might abridge or deny his right to vote, even though he had been qualified to register. Some of the cases hold that the registration process is a part of the voting process, and that it is a denial, it is an abridgement or denial under the 15th amendment to discriminate against a man or woman in the registration process just as well as in the actual voting process.

But, of course, I can see that even though he is registered, that the deprivation or abridgement may come in after the registration. But as I shall presently point out in the discussion, I do not think that it follows from the formula given here that it is a valid presumption of a violation of the 15th amendment.

Senator KENNEDY. Thank you.

(At this point in the proceedings, Senator Fong left the hearing room.)

MR. BLOCH. It is striking that of the bad seven, the electoral votes, as a result of the 1964 election, of five of them were cast for the Republican candidate, and save for his home State, were the sole five who voted for the Republican candidate.

Now, as to Georgia, I do not know whether our law as to voting qualifications would be swept aside because by the edict of the Director of the Census because of the supposition that 50 percent of all persons of voting age residing in Georgia were not registered on November 1, 1964, or because of the supposition or fact that less than 50 percent of all persons of voting age residing in Georgia did not vote in the presidential election of 1964.

(At this point in the proceedings, Senator Dirksen left the hearing room.)

MR. BLOCH. That is the problem that the Senator from Massachusetts addressed himself to. Regardless of the fact that 50 percent may have been registered, that 50 percent of them did not vote. Now, let us see about that.

Based on one or both of those states of fact, the Congress of the United States would be adjudicating that Georgia is now guilty of abridging or denying the rights of Negroes to vote on account of their race or color.

And what would be the basis or bases of such an adjudication? Either one or two, or maybe both.

One might be: 50 percent of all persons of voting age residing in Georgia were not registered 5 months ago on November 1, 1964, so

from that we presume that you are denying or abridging the right, not of all persons in your State but of Negroes, to vote.

The other, and the only other, would be or might be 50 percent of all persons of voting age residing in Georgia did not vote in the presidential election of November 1964 (which, by the way, our legislature was not compelled under the Federal Constitution or statutes to hold) so we from that presume that you are denying or abridging the right, not of all persons in your State, but of Negroes to vote.

Whichever "determination" of the Director of the Census may be used, the consequences on Georgia and the impact on her laws is equally unjustified, invalid, and not justified by any principle of constitutional law heretofore known.

In my suppositions, I have used Georgia as the example. The determination and the result in any other State would be just as invalid.

The dates are purely arbitrary.

The percentage used is equally arbitrary.

The events are purely arbitrary.

The supposed result from the facts determined is purely arbitrary.

The testimony of the Attorney General (p. 31) shows just how arbitrary the "triggering" is. Said he:

The premise of section 3(a), as I have said, is that the coincidence of low electoral participation and the use of tests and devices results from racial discrimination in the administration of the tests and devices. That this premise is generally valid is demonstrated by the fact that of the six States in which tests and devices would be banned statewide by section 3(a), voting discrimination has unquestionably been widespread in all but South Carolina and Virginia, and other forms of racial discrimination, suggestive of voting discrimination, are general in both of these States.

I interpolate there, and I ask the Senators to bear this in mind. The Attorney General of the United States in that testimony before the House, last week I think it was, said that in the six States in which tests and devices would be banned, statewide voting discrimination has been widespread in all but South Carolina and Virginia. Now, that is a statement of the Attorney General of the United States that voting discrimination has been widespread in the States of Mississippi, Alabama, Louisiana, and Georgia. Well, I leave to one side for the moment Alabama and Mississippi and Louisiana, but that is a statement of the Attorney General of the United States that voting discrimination has been widespread in Georgia. Now, bear that in mind as we go along here for a few minutes.

The New York Times of March 18 editorially said of the "drafters" of this bill in the Justice Department:

But they have been both inventive and inexorable in providing machinery to keep those standards from being imposed "to deny or abridge the right to vote on account of race or color." In the six Southern States where less than half the voting population participated in the last presidential election, presumption of past discrimination will be automatic, and no literacy or other qualifying test will be allowed to bar anyone from the ballot box in Federal, State, or local elections.

That same Constitution which is held to guarantee freedom to the owners of the New York Times to make money by printing what they please, guarantees to every State of this Union, the people of every State of this Union, including the six Southern States, the right to be free from the tyrannical provisions sought to be imposed on the basis of presumptions.

Before I proceed to discuss the law of such presumptions, I wonder why 50 percent is the figure used for participation in presidential elections. My information is that in Arkansas the participation was 50.1 percent; Kentucky, 52.6 percent; Tennessee, 51.2 percent. In Texas I believe it was less than 50 percent, but they do not have any literacy tests in Texas.

Senator ERVIN. It is 44.4 in Texas; it was about 51.8 percent in North Carolina. North Carolina is covered and Texas is not.

Mr. BLOCH. What was it in Texas, sir?

Senator ERVIN. 44.4 percent. They are not covered. They do not have a literacy test.

Mr. BLOCH. They are not covered by the law because they do not have a literacy test.

Senator ERVIN. That is right.

Mr. BLOCH. And even though they do not have literacy tests and there is not any test at all out there, there is not but 44 percent vote. So does it not follow from that that literacy tests have no effect on the number of people who are voting?

Senator ERVIN. We voted 51.8 percent on the State as a whole and Texas voted 44.4 percent. I asked the Attorney General to explain why more people voted in North Carolina with a literacy test than voted in Texas without a literacy test. He said the poll tax. I said, "Well, this bill is keyed to the presidential election, and the poll tax was abolished in Texas in presidential elections by amendments to the Constitution," and he said the people in Texas apparently had not found out about it.

I could not help but think that it was a pity that the voters in Texas were not required to read and write so they could have found out about it in the newspapers.

Mr. BLOCH. So you have the result; Arkansas in which 50.1 percent participated may use voting tests; Georgia in which, say 49.9 percent participated, may not.

The presumption arising from the one percentage is no more valid than the counter presumption arising from the other.

In Georgia there are 159 counties. I think we have more counties than any State in the Union with the possible exception of Texas and my home State of California.

My home county of Bibb with a total population (not merely persons of voting age) in 1960 of 141,249, had 54,872 voters registered as of November 1, 1964, which is doubtless more than 50 percent of the persons of voting age residing therein. According to the official records of Bibb County, Ga., 46,883 registered voters cast their ballots in the presidential elections of November 1964.

Section 3(a) is quite ambiguous, despite the fact that Supreme Court of the United States directs that "precision must be the touchstone of legislation so affecting basic freedoms," *NAACP v. Button*, 371 U.S. at 438, 83 S. Ct. at 340; *Aptheker v. Secretary of State*, 84 S. Ct. 1659, 1668. I can imagine no greater basic freedom than that of a State and the people of a State specifically reserved by the 10th amendment.

Section 3(a) lacks that precision. Suppose more than 50 percent of persons of voting age residing in Bibb County (or any other county) and more than 50 percent of such persons voted in the presi-

dential elections of November 1964; suppose further that those facts do not hold true for the State of Georgia as a whole, may Bibb County continue to use voting tests?

(At this point in the proceedings, Senator Hart left the hearing room.)

Mr. BLOCH. Suppose further that more than 50 percent of persons of voting age residing in the State of Georgia (or any other State) and more than 50 percent of such persons voted in the presidential election of 1964; suppose further that those facts do not hold true for a certain county or counties of the particular State; will the whole State be deprived of the use of voting tests because one, two, or even a majority of the counties do not conform to the arbitrary criteria set up in section 3(a)?

I recall an elder statesman once saying that you could not indict a whole people.

Particularly in the States of Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia the participation in presidential elections of less than 50 percent of persons of voting age residing therein is no criterion whatsoever of discrimination of any kind.

It is only recently that citizens of those States, regardless of color, have seen fit to participate in presidential elections to any extent. To illustrate—before I give you the reasons—look at these figures:

Votes in presidential elections.

[In thousands]

	1912	1920	1960	1964
Alabama.....	116	241	558	688
Georgia.....	120	150	723	1,138
Louisiana.....	79	125	807	896
Mississippi.....	65	88	238	409
South Carolina.....	80	66	387	825
Virginia.....	136	230	1,245	1,166

And I can imagine no greater—

Senator HRUSKA. Would the witness object to the insertion at this point in his statement the relative population in those States in the different years so we would have some idea of the growth of the population during that expansive time? That information can be furnished later. Would there be any objection on your part to that?

Mr. BLOCH. I would think it would be very fine to do it. I shall be glad to look it up and put not only the voters at those times but the populations at the same time and supply it to the committee.

Senator HRUSKA. Mr. Chairman, I ask unanimous consent that the witness be given that privilege.

The CHAIRMAN. Yes, sir.

Mr. BLOCH. To demonstrate that the trend upward of those figures is not confined to those six States, I include:

	1912	1920	1960	1964
Texas.....	298	465	2,313	2,609

You will see even from those approximate figures the total votes in those six States in 1964 were about seven times the total of 1912. That figure applies to Texas as well.

The principal reason for it is that up until about 1948, we were the "Solid South"; we were the backbone of the Democratic Party; it was taken for granted that we would vote the Democratic ticket so that in presidential elections we contented ourselves—up to 1936, anyway—with having a real voice in the nomination of the party's candidate, and then let the rest of the country fight it out in the election. Up to 1948 we did not bother to vote in presidential elections, or if we did, we simply voted Democratic. In 1948, the trend began to change. We discovered, after 12 years, that we no longer had any voice in the nomination, so we had better go to voting in the election. So you will find a marked increase after 1948 in the number of votes cast. But there still remain some who do not vote in the presidential elections either because they have not become accustomed to the new situation, or because rather than not vote Democratic—the party of their father and their grandfathers—they will not vote at all.

Interpolating right there, along the line of your suggestion, sir, I think we are going to find that the growth in voting, that the percentage of increase in voting in 1964 over 1912 is going to be much greater than the percentage of increase in population. I say that because I know that in 1912 Georgia had 12 Representatives in Congress; now we do not have but 10. I think that is true also of Mississippi and Alabama, that the representation has gone down. It may be that Florida and North Carolina have gone up, but the figures will demonstrate—and I think they will demonstrate that the percentage of voting has increased far more than the percentage of growth of citizenship.

The attorney—

The CHAIRMAN. We will recess now until 2:15.

(Whereupon, at 12 noon, the committee recessed, to reconvene at 2:15 p.m. the same day.)

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order. Proceed, Mr. Bloch. Which page were you on?

STATEMENT OF CHARLES BLOCH, ATTORNEY, MACON, GA.— Resumed

Mr. BLOCH. Mr. Chairman, before noon Senator Hruska made a suggestion as to putting into the record comparative population between 1910 and 1960 censuses in the six States involved. Using the 1910 census figure, 1910 and 1960 census figures, and 1912 to 1964 election figures, it shows that in Alabama in 1910 it had a population in round numbers of 2,138,000, in 1960 it had a population of 3,266,000. Georgia in 1910 had a population of 2,609,000; in 1960, 3,943,000.

(The information referred to was submitted in the afternoon session.)

Mr. BLOCH. Louisiana in 1910 had 1,656,000; in 1960, 3,257,000. Mississippi in 1910 had 1,797,000; and in 1960, 2,178,000. South Carolina in 1910 had 1,515,000; in 1960 had 2,382,000.

Virginia in 1910, the population was 2,621,000; in 1960, a population of 3,986,000.

(At this point Senator Dirksen entered the hearing room.)

Mr. BLOCH. As I read this comparison, bear in mind, of course, that in 1919, the woman's suffrage amendment, the 19th amendment, was passed, which, of course, added to the number of the people who could vote, so that the 19th amendment is to be taken into consideration in any comparison that is made. But a rough summary of that is that in Alabama the population increased 50 percent over that periodic time, and the voting on presidential elections increased 600 percent. In Georgia the population increased 50 percent, the voting increased $10\frac{1}{2}$ times, or 1,050 percent, 1,138,000 against 120,000.

In Louisiana, the population increased 100 percent, and the voting increased 1,200 percent. In Mississippi, the population increased 25 percent and the voting increased 600 percent. In South Carolina, the population increased 50 percent and the voting increased 1,000 percent, tenfold. In Virginia, the population increased 100 percent, and the voting increased 900 percent.

The Attorney General testified (p. 31) that the validity of his premise is demonstrated by what he calls the fact that, of the six States named, "voting discrimination has unquestionably been widespread in all but South Carolina and Virginia and other forms of racial discrimination, suggestive of voting discrimination, are general in both of those States."

I wish I had the power to compel the Attorney General to prove his statement that voting discrimination has unquestionably been widespread in four of those six States—particularly as to Georgia would I like to see him try to prove it. And if he proved it I would wonder why the Department of Justice really hasn't used the tools that Congress has given it over the past 7 years. Oh, I have read what he had to say about the delays in some of the Federal courts of those four States, particularly in two of them. But my own observation from reading and experience is that the U.S. Court of Appeals for the Fifth Circuit brooks no delay in the trial of any case unless there is good reason for it.

(At this point, Senator Ervin entered the hearing room.)

Mr. BLOCH. I think that is particularly true in any case involving civil rights.

In 1957, Congress enacted a "civil rights" law embodying voting provisions which was declared constitutional in the *Raines* case, *supra*. In 1960, it strengthened it. In 1964, it enacted another one. Since 1957, certainly, the Attorney General of the United States has had the authority to institute civil action for preventive relief whenever any person has engaged or there are reasonable grounds to believe that any person has engaged in any act or practice which would deprive any person of his 15th amendment rights. Since 1960, he may make the States parties defendant in such proceedings (42 U.S.C.A. sec. 1971). Such suits are brought in the Federal Courts which may appoint voting referees in certain instances (*ibid.*, sec. 1971e).

In the six States most grievously affected by this bill, Alabama has 67 counties, Georgia has 159 counties, Louisiana has 64 (parishes), Mississippi has 82 counties, South Carolina has 46 counties, Virginia has 98 counties; 416.

Therefore, there are 416 counties or political subdivisions as to which the Attorney General says "voting discrimination has unquestionably been widespread."

In how many of these counties has the Department of Justice instituted suits in the last 8 years? In how many of these suits has the court found a "pattern and practice" of discrimination authorizing the appointment of Federal referees?

I wrote out those questions in the early part of last week before I left home last Wednesday. Since I wrote them out, I had the opportunity to read the Attorney General's testimony before this committee last week, Wednesday, March 24. In response to Senator Ervin's questions, Senator Ervin asked "How many suits had been brought under the Civil Rights Act in 1957 and the Civil Rights Act of 1960?"

The Attorney General answered "71." I am reading from page 263 of the mimeographed report.

"In what States have they been brought?"

"Louisiana, Mississippi, Alabama, Georgia."

Senator Ervin said, "Two in Georgia?"

The Attorney General said, "Two in Georgia; yes, sir."

Well, now in all fairness, Senators, with 159 counties in Georgia and 2 suits have been brought alleging voter discrimination, is it fair to state that voting discrimination is widespread in Georgia, when over a period of 8 years, with all the tools that the Attorney General has, and the Attorneys General have had I should say, I think there have been 4 or 5 over that period of time, starting with Mr. Brownell in 1957, they have only seen fit to bring 2 suits in the 159 counties. I should think that that was proof that there is no widespread discrimination.

I don't know of course in what two suits the Attorney General had in mind when he said that there had been two brought in Georgia. I happen to know from history that I think it was prior to 1957 even that one suit was brought by an Attorney General down in Randolph County, Ga. The *Raines* case was brought in Terrell County, Ga. That was the one in which Judge Davis declared the act unconstitutional, and a Supreme Court reversed, and it went back down there for retrial. It was tried in the summer of 1960, just prior to the Democratic National Convention. If you are interested in reading it, you will find the case reported in the 189th Federal Supplement at page 121. I was counsel for the Terrell County registrars in that case.

Senator ERVIN. And incidentally the voting records show that in the county to which this law would apply, Bibb County, 49.8 percent of those of voting age voted in the last presidential election; whereas, 139 counties in the State of Texas to which the law would not apply voted less than Bibb County, Ga.

Mr. BLOCH. What about Terrell County? I wish we could put the figures in about Terrell County, Ga.; that is, down at Dawson.

Senator DIRKSEN. Mr. Bloch, if I may intrude just a moment; do you think the figures that have been developed by the Civil Rights Commission are reasonably authentic and authoritative?

Mr. BLOCH. I don't know. I don't know who composes the Civil Rights Commission now, Senator, but at one time I don't know whether they would have been or not, but if you are willing to rely on them, I am.

Senator DIRKSEN. Well, I took a look at the figures this morning for counties in these various States. In Alabama, those qualifying by age and residence had in some cases a white registration of 100 percent. In the lowest county in Alabama, the nonwhite registration was 1.4 percent. In Arkansas the high registration white was 85 percent. The lowest county for nonwhite had actually no colored registered.

In Florida they had counties that registered 100 percent white; nonwhites, two-tenths of 1 percent. In Georgia you had counties that registered 100 percent white of those who by age and residence would otherwise be qualified. Your lowest county was three-tenths of 1 percent for nonwhite.

Mr. BLOCH. What county is that, Senator?

Senator DIRKSEN. I don't have the county. I didn't jot it down. In Louisiana, some counties 100 percent white registration; nonwhite, 1.9 percent. In Mississippi, 100 percent white registration in a number of counties; in the lowest county, the nonwhite registration, two-tenths of 1 percent.

The CHAIRMAN. Right there will you yield?

Senator DIRKSEN. Yes.

The CHAIRMAN. What did the Attorney General say about the reliability of the Civil Rights Commission's figures?

Senator DIRKSEN. I was just asking Mr. Bloch.

The CHAIRMAN. I think the record ought to show it.

Senator DIRKSEN. What he thought about it.

Mr. BLOCH. I don't know anything about it.

The CHAIRMAN. What the Attorney General thought about those figures? He thought they were worthless, if I remember correctly.

Mr. DIRKSEN. I have no such recollection.

Mr. ERVIN. Under the examination by Senator Javits of New York, he testified that he considered them unreliable and wouldn't go by them. He said he wouldn't accept them.

Mr. BLOCH. I would think if the Attorney General had any confidence in the figures, and there was a county in Georgia which hadn't registered but 3.6 percent of the Negroes, he would file suit in that county.

Senator DIRKSEN. That is the point that he makes.

Mr. BLOCH. Undoubtedly.

Senator DIRKSEN. You had a lot of suits.

The CHAIRMAN. You had two in Georgia.

Senator DIRKSEN. It becomes an endless enterprise.

Mr. ERVIN. I have no confidence in those figures because they report on all the Negroes of voting age who are registered in my county. I have no confidence in the reports of discrimination in registration in Clay County, N.C., where there is not a single Negro resident. That is how reliable the figures are.

Now what is the other county in Georgia where the suit was? It was Terrell County, wasn't it?

Mr. BLOCH. Terrell County; yes, sir.

Senator ERVIN. I can't give you the figures because the figures I have are taken from the Congressional Quarterly for March 19. It reports the counties where less than 50 percent of the qualified voters—I mean persons of voting age who failed to vote, Terrell County, in which the suit was brought, voted a higher percentage of its popu-

lation, about 50 percent higher, than 138 counties in Texas to which the law does not apply.

Mr. BLOCH. I notice that in those figures that Senator Dirksen—
Senator ERVIN. But Terrell County would be brought under the bill because some other counties, either because of apathy or because the people didn't like the candidates running, didn't go out and vote.

Senator HART. Will the Senator yield?

Senator ERVIN. Yes. I don't have the floor. This is Mr. Bloch's time.

Senator HART. I was just curious if there was a disposition to amend the bill to broaden it to bring in Texas and other States?

Mr. BLOCH. I don't think it would be any more constitutional if you brought in Texas than it is now, but I would like to see what happens if you brought in Texas.

Senator ERVIN. What we are trying to show, and put this in North Carolina language, if something has neither rhyme nor reason, it is "cockeyed." We are trying to show this is a "cockeyed bill."

For example, it talks about people who aren't registered. North Carolina has, according to figures put in the House Record by the Attorney General himself, 76 percent of all the people who are 21 years of age and over registered in North Carolina. It has a literacy test. That shows that North Carolina is discriminating.

New York State has less registered than North Carolina. It has 74.5 percent of those 21 years of age and above of voting age registered. That shows that New York, which has a literacy test, and a lower registration ratio than North Carolina, is not discriminating, but North Carolina is.

Then we had the fact that North Carolina votes 51.8 of its voters; Texas 44.4 of its voters; that shows North Carolina is discriminating under this formula, but not Texas. That is what we are trying to show. We don't want to amend the bill to get broader coverage. We want to bring any kind of legislation in harmony with the Constitution. I think that is your position and mine.

Mr. BLOCH. And those figures that Senator Dirksen read out as I heard him, and I don't hear the best in the world, I think Arkansas and Florida had some pretty bad counties.

Senator DIRKSEN. Oh, yes.

Mr. BLOCH. But neither one of those States, neither Arkansas nor Florida, would be affected by the pending bill.

Senator DIRKSEN. It shows that I am completely impartial about it when I present figures.

Mr. BLOCH. Yes, sir. You wouldn't be anything else. But it shows also that the presumption isn't correct.

Senator DIRKSEN. That is the reason I prefaced my question with whether or not you thought the Civil Rights Commission figures were accurate.

Mr. BLOCH. I know nothing about it. You gentlemen, you Senators know more about the Civil Rights Commission than I do. But if people set out to prove something and get up a bunch of figures, you remember the old expression, they can pretty well prove it by figures, but I have no reason to disbelieve them. I have no reason to believe them. I would rather let the Attorney General and you gentlemen of the Senate size up the veracity of the Civil Rights Commission.

Senator ERVIN. You know these figures that they are invoking here shake my faith in the old expression you refer to. The old expression was figures don't lie, but liars sure do figure, but there is proof here that even figures lie.

Mr. BLOCH. That is what I meant. I would rather for you to say it.

Senator DIRKSEN. But you see they also say in that old aphorism besides figures they are statistics.

Senator ERVIN. I have always heard also that they say there are three kinds of liars. The first is a plain and simple liar, then a damn liar, and then statistics.

Mr. BLOCH. That Terrell County case, I gave you the citation of it, 189 Federal Supplement 121. Now that case went back to Judge Bootle. He is a good judge, the finest trial judge I have ever seen. He is a good judge and he was going to call them like he sees them, and he isn't going to brook any delay in any case. That case went back to Georgia. It is reported in 203 Federal Supplement at page 147. I will read you a part of it because I don't have it in my manuscript. The headnote is this, the summary of it:

After a lengthy trial, discrimination was found and an appropriate injunction was issued.

That is in the 189.

The plaintiff filed a motion for a finding as to a pattern or practice to deprive Negro citizens of their voting rights. The District Court Judge Bootle held that discretion would be exercised to refuse to make such findings where the defendant voting authorities had assured the court that they would obey the injunction restraining them from depriving Negroes of their voting rights.

The language that Judge Bootle used in that case at page 152, a line or two there that I want to read into the record, because it is apt here:

"Similarly in this case this court feels charged with the duty of exercising the judicial discretion in determining whether to make a finding as to pattern or practice in this specific case. Particularly is this true in view of what would be the far-reaching consequences of the finding of deprivation pursuant to a pattern or practice, namely conferring upon this Federal court jurisdiction to pass upon the qualifications of a citizen to vote in State elections without any finding that the particular citizen had been denied the right to vote on account of his race or color, and conferring upon this Federal court also the duty of passing upon such qualifications in the event any Negro within the affected area of Terrell County applies to this court for an order declaring him qualified to vote and proves that he is qualified under State law to vote and has since such finding by the court been deprived of or denied under color of law the opportunity to register to vote or otherwise to qualify to vote or found not qualified.

Accordingly the plaintiff's motion that this court at this time make a further finding that the deprivations heretofore found were and are pursuant to a pattern of practice is hereby denied, but this denial is without prejudice to the right of the plaintiffs to renew said pending motion.

And so forth.

Now my recollection, my understanding—I was the counsel in that case and I notice—that when those two orders came down, we formulated a plan by which registration proceedings would be handled in Terrell County. What I am going to say now I don't know. I don't know whether it has been followed up to this day or not, because I understood that there was another suit filed down there within the last 2 or 3 years in which I was not of counsel. So I don't know what happened after this 202 Federal Supplement.

But I mention those figures to demonstrate to you that if the remedies which the Congress, which this Senate has now given to the Attorneys

General over the period of years since 1957 are really used in any court, in any one of the affected States, the Federal courts, particularly the Circuit Court of Appeals, the Fifth Circuit, will see that the instruments, the tools which you have given the Department of Justice are successfully used—there is one if—if there is any truth in the assertion that discrimination is widespread. If discrimination is widespread throughout the State of Georgia, why only two suits?

Now the only other suit that I know of, to get the whole thing before the committee, from 2 or 3 years ago the United States filed a suit in Bibb County, Ga., my home county, against the Bibb County Democratic Executive Committee. It is reported at page 492 of the 222 Federal Supplement. It was decided June 1, 1962.

In that case the complaint was not that there was a discrimination, that there was a pattern of discrimination, a pattern or practice, but that case was rather different. That case was based on the fact that the colored people were segregated at the polls, and that separate registration lists were made as to colored and white.

During the course of that case, I represented the Bibb County Democratic Executive Committee in that case, during the course of it when it came our time to put up proof, I turned back to the audience, the spectators in the courtroom, and there were perhaps 50 or 60 people in there, and I selected 2 or 3 of them, all colored people that I didn't even know. I didn't even know their names.

I put them on the stand and asked them their names after they had got on the stand, asked them if they had ever been discriminated against in registering or voting in Bibb County, Ga., and the two of three of them that I called there said no. And they weren't scared of anything. They were in a Federal court sitting right below the judge.

There just isn't any such pattern of discrimination. And finally on that 203d Federal Supplement, my further recollection is that there was no appeal filed from Judge Bootle's decision in that case.

Senator DIRKSEN. Mr. Bloch, is it your opinion that actually discrimination has to be widespread in order to be covered by the 15th amendment? It says the rights of the citizens. That could be one citizen.

Mr. BLOCH. No, sir.

Senator DIRKSEN. It can be 10.

Mr. BLOCH. I think that the 15th amendment has an impact on one isolated case.

Senator DIRKSEN. Sure, it covers a single case.

Mr. BLOCH. But my point is that the Attorney General said in supporting this bill, in his argument to this committee and to the House committee, I don't know about this committee, but to the House committee in supporting this bill, that everybody knew that voting discrimination had been widespread in those four States, and I say that isn't so.

Mr. DIRKSEN. But see if you are going to take your Constitution straight, that of course you have got to think in terms of the single citizen. It is like the little boy, when teacher said to him "Johnny, how do you spell straight?", he said, "s-t-r-a-i-g-h-t." She said, "What does it mean?" He said "Without ginger ale." That is the way you take your Constitution.

Mr. BLOCH. Without what, Senator?

Senator DIRKSEN. Without ginger ale. So one citizen may be affected. It doesn't have to be widespread.

Mr. BLOCH. If you take the Constitution straight, you have given the Department of Justice in 1957 and in 1960 and in 1964 tools to stop what he says is widespread discrimination. Why hasn't he used them? I suppose sometimes, I wonder sometimes if he hasn't used them so that he could come back and get a more stringent law.

Senator ERVIN. Mr. Bloch, if you are going to take your Constitution straight, you can leave out the ginger ale but you have to put in the second section of the first article of the Constitution, and the 17th amendment which provides that electors for Senators and Representatives in Congress shall be elected by electors possessing the qualifications prescribed by State law for the most numerous branch of the State legislature. That would therefore take in those who have passed a literacy test in those States which have it, wouldn't it?

Mr. BLOCH. Yes, if you take the Constitution straight as it has been decided over the years, I don't think we would have anything to fear about the constitutionality of this bill, if we take it straight and apply it to this bill, why the bill is unconstitutional in my humble opinion.

Senator DIRKSEN. Have you discussed, while I was absent, the second section of article 15 of the Constitution, the language which says that the Congress shall have power to enforce this article by appropriate legislation? Have you discussed that?

Mr. BLOCH. I have discussed it somewhat and am coming to it some more. My point is that this legislation, the point that I have discussed and will discuss further I think, further on in here, that this is not appropriate legislation under the 15th amendment. Even if its objective is appropriate, it goes further than the Congress can go in the light of the Constitution as a whole.

Senator ERVIN. I would like to ask you furthermore, if you are going to take your Constitution straight, if you don't have to listen to these words I am going to read out of ex parte Milligan. We have been assured by my good friend from Illinois and by the Attorney General that this bill would not abolish literacy tests but would merely suspend them in the States affected.

I ask you if we are going to take our Constitution straight, if you won't have to take these words from ex parte Milligan, and I read from pages 120 and 121 from that decision in the 71st United States Reports.

The Constitution of the United States is a law for rules and people, equal in war and in peace, and covers with the seal of its protection all classes of men at all times and under all circumstances.

I emphasize:

No doctrine involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during the great exigencies of Government.

Don't you have to take that if you are going to take the Constitution straight?

Mr. BLOCH. Yes, sir.

Senator ERVIN. And isn't this bill in violation of that doctrine, or rather in harmony with that doctrine, which is declared to be the most pernicious doctrine invented by the will of man, to provide that in 6

Southern States and in 34 of 100 North Carolina counties the provisions of the second section of article I, the provisions of the 17th amendment, and the provisions of the 10th amendment reserving to the States the right to prescribe qualifications for voters in State and local elections will be suspended?

Mr. BLOCH. If you are going to take it straight, yes, sir. If you are going to take it straight, you have got to take it as a whole.

As I see it, the power of the Congress under the 15th amendment, and what is appropriate legislation under the 15th amendment is confined to legislation which abridges or denies a Negro's right to vote, if the State passes legislation or uses legislation which deprives or abridges a Negro's right to vote on account of his race, color, or previous condition of servitude, the courts have a right to nullify either that law or action under the law.

For the sake of example, suppose the State of Georgia or any other State had a literacy test which said that every person in order to vote should be able to read the very first section in the Constitution. That would be a perfectly valid law under the *Northampton* case and under every other case that I have ever read.

But suppose in the administration of that perfectly valid law, some of the registrars panoplied with State power should say that a colored person who had read that statute completely and rightly, who had said to him, "You didn't read it right, we are not going to let you vote", I think that the Federal courts would have, the Attorney General would have the right to file suit against that registrar who had discriminated against that colored person, because he hadn't used a perfectly valid law as it should be used, and under the *Raines* case he had a right to enjoin him.

But that was the appropriate legislation if it went into the form of an act. It would be an appropriate proceeding. But I say that the Congress of the United States would not have the right to enact a statute to take the place of that perfectly valid test, that that is not appropriate legislation under the 15th amendment because, sir——

The CHAIRMAN. What you are saying is that the Congress has got no power to fix voter qualifications?

Mr. BLOCH. That is exactly what I am trying to illustrate. I am not by myself in it. The cases that I read before noon, there are five or six of them which said it.

Somebody asked the Attorney General here before this committee the other day, so I read, if he had ever heard of the Congress or the Federal courts prescribing a law to take the place of one that the courts had declared invalid, and he referred to the apportionment decisions.

Well, I suggest to you, and I think I cover it a little later here, I suggest to you and I would like particularly for Senator Dirksen to hear this, that even in the apportionment cases in *Baker v. Carr* and the cases that follow it, the four cases of last June, that the Supreme Court said that the Federal courts had the right to nullify the State laws under the one-man one-vote theory.

But I say to you that even if they have that right, and they never got into that political thicket until *Baker v. Carr*, even if you grant that they have that right, that doesn't mean that the Federal courts have a right to set up a legislature. Even taking *Baker v. Carr* to the extreme, all that it means is that the legislature violates the rule

of *Baker v. Carr*, and the *Colorado* case and the *Michigan* case and the *Delaware* case, that that legislature can't do any more. It is no more.

But that doesn't mean that the Federal courts or the Congress have a right to set up a legislature in place of it, because suppose the State may say, "Well, if we can't have that kind of a legislature that our constitution and our laws say we should have, if that sort of a legislature violates the equality clause of the 14th amendment, then we won't have any legislature at all."

Hasn't a State got a right not to have a legislature if it can't have the kind it wants? Of course. That is extreme. But the extremity of it demonstrates the lack of power in Congress or the Federal courts to substitute a legislature for the one they declare invalid.

Now I think if you take the Constitution straight, what prevents the Federal courts from having that power, in the Federal courts rather than the congressional situation, is the 11th amendment. The 11th amendment provides that there shan't be any suit against a State in the Federal courts except by the United States. It was decided recently that the United States could sue, reiterating the decisions, on March 5.

Senator DIRKSEN. Mr. Bloch, if I may intrude, I would like to ask Judge Ervin the date of the *Ex parte Milligan* case. The year is out of my mind at the moment, but it goes way back into the history of the Republic. But I thought for the record the year in which that was handed down ought to be known.

Mr. BLOCH. What was handed down?

Senator DIRKSEN. The *Ex parte Milligan* case.

Senator ERVIN. It was handed down in December 1866. The *ex parte Milligan* case was a case that arose during what you and I call this War Between the States, and the Senator from Illinois calls the Civil War. It arose when the feelings were much higher and the tensions much greater and the national emergency and exigencies of the case were far above even those that prevail in Selma, Ala., at this moment, were they not?

Senator DIRKSEN. *Ex Parte Milligan* was handed down 1 year after the 13th amendment.

Mr. BLOCH. The same Constitution?

Mr. DIRKSEN. I know, but 2 years before the 14th amendment, and 4 years before the 15th amendment. The point I want to make is this.

You talked this morning about *Plessey v. Ferguson*. The school cases, the separate but equal doctrine, that was handed down in 1896. But 58 years later the present Court struck that down. In the *Tide-lands* case, those went back 100 years, and in one fell blow the Court struck down every case that had been adjudicated up to that time for a century.

Mr. BLOCH. With all respect to the Court, Senator, and I have the deepest respect for the Court, I am a member of the Court, I am a member of the bar of the Court, I don't think that the Court heeded your admonition. I don't think the Court took the Constitution straight when it decided in *Brown v. Topeka*, but it is the law of the land now.

Senator DIRKSEN. That is right, and we must follow it. But even if *Brown v. Topeka* was good law, it by no means follows that this is good law.

Senator ERVIN. The second section of article I of the Constitution was entered before the 15th amendment was adopted, and is still there in the same words. It has been there 176 years, and the 17th amendment, which is far subsequent to the 15th amendment, reincorporates those words in the Constitution.

Mr. Bloch, don't you agree with me that that what the Senator from Illinois says indicates that he hasn't very much confidence in the judicial stability of the Supreme Court?

Senator DIRKSEN. I have the utmost confidence in them. I disagree with them at times, but it doesn't impair my confidence.

Senator ERVIN. Did you understand the Senator to insinuate that you couldn't expect them to adhere to the interpretation based upon plain words in the Constitution through a period of approximately 176 years as, in the case of the second section of the first article?

Mr. BLOCH. Are we talking about *Brown v. Topeka* now?

Senator ERVIN. No, I was asking if the insinuation of the Senator from Illinois was that any case that old can't be relied on. Doesn't that manifest what I regretfully call a lack of confidence in the judicial stability of the Supreme Court?

Mr. BLOCH. You are asking Senator Dirksen that?

Senator DIRKSEN. Mr. Bloch, I have to remind my charitable friend of that song in World War I days "They were all out of step but Jim." Sometimes I feel that the Supreme Court is all out of step but me. However, I still have the highest regard for the highest tribunal of the country, and when they speak and interpret the Constitution, that becomes the law of the land, and when one court reverses another court over a period of time, the new reversal becomes the law of the land.

I had some doubts for a time about title II of the 1964 act dealing with public accommodations, and I was in pretty good company. A former associate justice went to one of the law schools to deliver a lecture, and he among others felt that the Supreme Court was on bad ground, would be if it undertook to validate the accommodations section. Yet it was approved by I expect a unanimous court, wasn't it, the accommodations section of the 1964 Civil Rights Act?

Mr. BLOCH. What did you ask about it?

Senator DIRKSEN. I was just trying to remark that there can be a lot of doubt about constitutionality, but once the court has spoken, that is it.

Mr. BLOCH. That is it. There is no use arguing about that. But I wonder sometimes if the Constitution were taken straight when the interstate commerce clause was applied to a barbecue stand in Birmingham, Ala., in the *McClung* case or whatever the name of it was.

But when I paused for breath there a while ago, the point that I was trying to make, and I hope you will watch it, all of you gentlemen will, that that is that while the Supreme Court of the United States has now said that under the 14th amendment the one-man—one-vote rule, that it has a right to interfere, the Federal courts have a right to interfere with the composition of State legislatures, does that mean that the Federal courts have a right to decree what shall be composition of a State legislature which it nullifies?

It seems to me I know the rule that they will try to invoke, equity having assumed jurisdiction of the case, that equity will grant complete

relief. But that maxim comes into collision with the 11th amendment. The 11th amendment prevents, as you know, a suit against a State by individuals and all these cases are brought by individuals or they have no standing in court.

While those individuals have the right under the one-man—one-vote rule to enjoin the composition of the legislature, do they have the right to command the State to set up a legislature composed according to this formula?

Doesn't that become a suit against the State that is forbidden by the 11th amendment? The only reason that a suit against a State by an individual can be brought, despite the 11th amendment, is that the Court said way back there in the *Young* case I believe it was, the 209th, that when a State officer was acting illegally or unconstitutionally, that he was no longer protected by the State, and therefore there was a suit against a State, but does that mean you can tell an officer, "You set up a legislature like this"?

The impact of that is that that is just exactly what this bill asks the Congress to do. It goes back to what the chairman just said a while ago. It goes beyond simply saying you shan't abridge or deny, you mustn't do that any more. You can't do that any more. But you should do it this way. That is why I think taking the Constitution straight, that is one of the reasons why it gets into the unconstitutional realm.

One of two states of facts is unquestionably true. There is no widespread discrimination forbidden by the 15th amendment, or the Department of Justice has, purposefully or neglectfully, been lax in the exercise of the processes at its disposal which would remedy such widespread discrimination if it in fact existed.

Maybe the truth of the matter is that present acts of Congress do not, as Circuit Judge Wisdom points out in *United States v. Manning* (215 F. Supp. 262), purport to fix qualification of voters or to give that right to any Federal judge. That is one of the latest expressions. There are other cases in the fifth circuit on that, and I read these cases in the light of the Attorney General's testimony that the delay, and I repeat that anybody who knows the composition of that court knows that the court brooks no delay in any case, particularly the civil rights case. I call attention to the recent case of *United States v. Fox* (334 Federal 2d 449). They simply protect the rights of voters, qualified under State law, to participate in elections (op. cit. p. 285.)

No wonder that the acts do no more for up to now it has been conceded that is all the 15th amendment does. But, now, Congress is urged to go over and beyond the 15th amendment—to do more than protect the rights of voters qualified under State law, and to determine who shall be qualified, not under State law, but under the terms of the act it passes.

What is really troubling the Department of Justice and the civil rights people is that there is really no such widespread violation of the 15th amendment as will justify Federal action under it, so they want Congress to presume such violation.

They cannot meet the constitutional guidelines set up by the courts—so they want different guidelines which are not warranted by the Constitution.

The present guideline, declared by the Federal courts to be warranted under the Constitution and appropriate statutes is:

If a pattern or practice of discrimination is found (under sworn evidence in an action in a proper court), the court is empowered to declare persons entitled to vote who have been judicially found to have been deprived of voting rights on account of race or color. If the Federal court finds, from the evidence before it, such pattern or practice of discrimination, those who have been subjected to discrimination are entitled to an order declaring them entitled to vote.

Such was the pronouncement of the U.S. Court of Appeals for the Fifth Circuit on July 21, 1964, in *United States v. Fox* (334 F. 2d 499), following the principle which that same court had several times stated. (See cases cited in footnote 10 at p. 453 of 334 F. 2d.)

The panel which decided the *Fox* case was composed of Circuit Judges Rives and Jones, and the District Judge Bootle. Certainly the Department of Justice cannot accuse either one of those eminent judges of "tarnishing" our judicial system "by evasion, obstruction, delay, and disrespect."

(Testimony before House committee, p. 11.)

Mr. BLOCH. The premise is false.

But even if the premise were true, it would by no means follow that Congress would be constitutionally authorized to give the premise the effect sought by this bill.

I must assume that a State or a political subdivision is entitled to constitutional consideration of the same degree as any one of its citizens or as any one within its jurisdiction.

I will now deal with the presumptions that are set up in this bill.

The "main fact in issue" is whether the 15th amendment is being violated by certain States, political subdivisions, or officers.

The Congress is asked to declare that if the Director of the Census determines either that 50 percent of the persons of voting age residing in a given State or political subdivision were not registered on November 1, 1964, regardless of whether they sought registration or not, or that 50 percent of such persons did not vote in the presidential election of 1964, that State or political subdivision is presumed to be now in violation of the 15th amendment.

(At this point in the proceedings, Senator Eastland left.)

I quote from the case of *Bailey v. the State of Alabama* (219 U.S. 219):

While States may, without denying due process of law, enact that proof of one fact shall be prima facie evidence of the main fact in issue, the inference must not be purely arbitrary; there must be rational relation between the two facts, and the accused must have proper opportunity to submit all the facts bearing on the issue.

(At this point in the proceedings, Senator Dirksen left.)

Mr. BLOCH. The "accused" here are all of the State and political subdivisions of the United States.

While the "accused" may seem to be just a few Southern States, and while the other 44 may be tempted to stand mute and think, "Let those southerners squirm," I warn you that if this bill passes, and is declared constitutional, then by the same device and with the same argument which Mr. Katzenbach used before the House committee, the criminal statutes, the jury statutes, taxing statutes of every State of this Union may be swept aside.

So I respectfully request that not only the six States which seem here to be mainly affected, but all of the States give heed to what the Department of Justice is trying to do.

The inference it seeks to draw is purely arbitrary; there is no rational relation to the premise, even if it be a fact, and the ultimate fact in issue; the accused does not have proper opportunity to submit all the facts bearing on the issue. There is absolutely no opportunity afforded the State or political subdivision to submit any fact bearing on the issue prior to the impact of the decision, resulting from the use of the presumption.

Parenthetically, I do not know how any one can now tell how many Negroes are registered or how many voted in a given political subdivision, or a given election. "The keeping of separate registration and voting records for whites and Negroes according to race" is subject to Federal injunction. It was forbidden by the district court in Georgia, *United States v. Raines*, (189 F. Supp. 121, 133(3)); *Anderson v. Courson* (203 F. Supp. 806), and in the Bibb County case that I read to you a while ago.

One of the salient inquiries which would have to be made as to a low registration in any given political subdivision would necessarily be: How many attempted to register and were denied the privilege? The mere fact of nonregistration of a given percentage without division between races, and without any reason assigned for the nonregistration, and without any showing of attempts to register, proves nothing.

Applicable, too, is the case of *Manley v. State of Georgia* (279 U.S. 1), wherein the court held that a presumption created by the Georgia Banking Act to the effect that every insolvency of a bank should be deemed fraudulent as to the president and directors was violative of the Federal Constitution in that the presumption created thereby was unreasonable and arbitrary, as pointing to no specific transaction, matter or thing as the cause of the fraudulent insolvency, or to any act or omission of the accused tending to show his responsibility. Furthermore the court said that a law creating a presumption which operates without a fair opportunity to repeal it violates the Constitution.

It is not within the province of a legislature to declare an individual guilty or presumably guilty of a crime (*McFarland v. American Sugar Co.*, 241 U.S. 79, 86.)

In *Western & Atlantic R. Co. v. Henderson* (279 U.S. 639), the Supreme Court applied the principle of the *Manley* case, supra, to a statute of Georgia in a civil case. The Court held that a section of the Georgia code which raised a presumption of negligence against a railroad in an action for damages, construed as raising presumption, on mere fact of grade crossing collision and resulting death of occupant of automobile, that railroad and its employees were negligent and without other evidence of negligence permitting presumption to be considered as evidence against defendant's evidence tending affirmatively to prove that operation of train was not negligent was unconstitutional.

(At this point in the proceedings Senator Dirksen returned.)

Legislative fiat may not take the place of fact in the judicial determination of issues involving life, liberty or property (*ibid.* p. 642).

A fortiori, legislative fiat may not take the place of fact in the determination of whether a State of this Union has violated the provisions of the 15th amendment to the Constitution.

In *Tot v. United States* (319 U.S. 463, 467), the Court explained what it meant by a "rational connection." There is declared a presumption invalid.

There has been a very recent case of the Supreme Court of the United States, which may be the one which the Attorney General had in mind when he drew this bill. That is the case of *United States v. Gainey* which was decided March 1, 1965, just a month ago, reported in the 33d Law Week, page 4200. That case started in the fifth circuit too. It started under the name of *Barrett v. United States, Barrett v. United States* (322 F. 2d 202), a decision of the Fifth Circuit Court of Appeals held unconstitutional a statute creating presumptions of defendant's possession of still and carrying on business of distiller on showing of defendant's unexplained presence at the still site. (1963—Circuit Judge Tuttle, Wisdom, and District Judge Johnson.)

This case was reviewed by the Supreme Court in a decision of March 1, 1965, sub nomine, *United States v. Gainey* (33 L.W. 4200). The Supreme Court (7 to 2) reversed the court of appeals and held the statute to be valid. The rationale of the opinion, holding that there was a rationality in the connection "between the fact proved and the ultimate fact assumed." The support for the holding was:

Congress was undoubtedly aware that manufacturers of illegal liquor are notorious for the deftness with which they locate arcane spots for plying their trade. Legislative recognition of the implications of seclusion only confirms what the folklore teaches—that strangers to the illegal business rarely penetrate the curtain of secrecy. We therefore hold that 5601(b)(2) satisfies the test of *Tot v. United States, supra*.

That case is by no means decisive of the situation here though it may have been the inspiration for the plan of this bill.

(At this point in the proceedings Senator Eastland returned.)

(At this point in the proceedings Senator Dirksen left.)

Suppose someone made the statement to you that the State of Montana is depriving Negroes of their right to vote on account of their race or color. Suppose you asked: What proof have you on that statement? He answered: The Director of the Census has just determined that less than 50 percent of the persons of voting age residing in Montana were registered on November 1, 1964; less than 50 percent of the persons of voting age residing in Montana voted in the presidential election of November 1964. Would you consider that answer to be the slightest proof of the statement? I doubt it. I daresay you would ask many, many questions—one of them would be how many of those who constitute 50 percent of the persons of voting age residing in Montana were citizens? How many were Negroes? How many sought to register? How many were qualified under Montana law?

I daresay that you would know that the premise is totally unrelated to the ultimate fact to be proven, and that any thought that might be a valid connection between the two would only arise if someone planted the seed of propaganda in your thoughts. "Well, you know, voting discrimination has unquestionably been widespread" out there—but we haven't been able to prove it.

You will see from this bill that whatever the area may be, voting tests become inoperable in that area the very instant the Director of the Census determines one of the two factors of section 3(a).

Absolutely no remedy is given in the bill to the State or any political subdivision thereof to offer proof to rebut the thoroughly irrational presumption. Even if it were rational, it would be invalid because of this lack of opportunity.

Senator ERVIN. I would like to call your attention to some figures which show there is no rational connection between the number of persons that are required to be registered under this bill, 50 percent, and this presumption. Georgia and Louisiana, according to figures given by the Attorney General in the House Record, have 63 percent of all the people of voting age registered.

Now the bill doesn't apply to Arkansas. It doesn't apply to Florida. It doesn't apply to Hawaii. It doesn't apply to Kentucky or to Texas. These States that I have enumerated have a lesser percentage of persons of voting age registered than Georgia and Louisiana.

(At this point Senator Dirksen returned to the hearing room.)

Arkansas has only 56 percent, Florida 54 percent, Hawaii 60.6 percent, Kentucky 51 percent, Texas 56.5 percent. Yet under this bill you have a presumption, they say, based on registration, that Georgia and Louisiana are discriminating, are violating the 15th amendment, whereas these other States which have a lesser percentage of their persons of 21 years of age and over are not.

To take my own State of North Carolina for example. North Carolina has 76 percent of the people of voting age population registered according to the figures put in the record over there by the Attorney General himself. North Carolina has a larger percentage of its people 21 years of age and over registered than Arizona which has 66 percent. Arkansas has 56 percent, California 75 percent, Florida 54 percent, Hawaii 60.6 percent, Kentucky 51 percent, Maryland 67.6 percent, Michigan 72 percent, Nevada 67 percent, New York 74.5 percent, Oregon 75 percent, Tennessee 72.7 percent, and Texas 56.3 percent.

Yet you have a presumption here that North Carolina is discriminating against its people in at least 34 counties, whereas 13 States which have a smaller percentage of their persons of voting age registered are not presumed to be discriminating.

I say it is a cockeyed bill if there ever was one. There is no relationship between the two. Just to show you how ridiculous it gets, we have the State of South Carolina, with 56 percent of its voters registered; it outregisters Florida, Kentucky, and Texas. South Carolina is presumed to be violating the 15th amendment by reason of its registration figures, but not the others, under this formula.

Now take Arkansas and South Carolina. Each one of them has 56 percent of their people of voting age registered. The 56 percent in South Carolina comes within the formula of those that are to be governed. But Arkansas, with exactly the same percentage does not come in. There is no rhyme and no reason and no rational connection between the fact and what is presumed from the fact, as you point out so well.

Mr. BLOCH. Right there, Senator Ervin, as I understand the bill—what were the figures for Georgia, 42 percent?

Senator ERVIN. Georgia has 62 percent registered.

Mr. BLOCH. What percent voted in the last election?

Senator ERVIN. I don't have the exact percentage.

Mr. BLOCH. It was 49 percent. As I understand this bill, the minute the Director of the Census determines that only 49 percent of the voters, the registered voters or people of voting age voted last November, then it is presumed that Georgia violated the 15th amendment, therefore Georgia can no longer use the voting tests.

Now the Attorney General said before the House committee, and this is the particular part that I hope the Senators not only from the South but the Senators from all the States will notice, which I will quote shortly.

A presumption is valid only if opportunity is given to rebut it in the forum in which the prosecution uses the presumption.

Suppose for example the presumption held valid in the *Gaines* case had had a provision in it: Should the defendant be found guilty in a case in which this presumption is used, he may offer evidence to rebut it in a certain court in Washington. If that court in Washington should find the presumption invalid, the verdict and sentence shall be set aside.

Doesn't that sound preposterous? It does—but that is exactly what this bill provides.

For fear that you may not have read what the Attorney General had to say on this subject before the House committee, I quote it:

In view of the premise for section 3(a), Congress may give sufficient territorial scope to the section to provide a workable and objective system for the enforcement of the 15th amendment where it is being violated. Those jurisdictions placed within its scope which have not engaged in such violations * * * the States and counties affected by the formula in which it may be doubted that racial discrimination has been practiced * * * need only demonstrate—

here is what the Attorney General said—

need only demonstrate in court that they are guiltless in order to lift the ban of section 3(a) from their registration systems. That is, section 3(a) in reality reaches on a long-term basis only those areas where racial discrimination in voting in fact exists (House hearing manuscript, p. 82).

That statement is that of the chief law officer of the Government of the United States so naturally it has been heeded and quoted.

To paraphrase the television: Will the real section 3 please stand up?

I beg of you Senators to requestion 3(a) and analyze it with me and see just what it does do. Bear in mind that the Attorney General says now that Georgia, when that presumption is invoked against it, that Georgia need only demonstrate in court that they are guiltless in order to lift the ban of section 3(a) from their registration systems.

Now let's see what it does do, the facts we are dealing with.

Here is what section 3(c) of the bill provides.

(c) Any State with respect to which determinations have been made under subsection (a) or any political subdivision with respect to which such determinations have been made as a separate unit—

May file where?

In a three-judge district court convened in the District of Columbia an action for a declaratory judgment against the United States, alleging that neither the petitioner nor any person acting under color of law has engaged during the 10 years preceding the filing of the action in acts or practices denying or abridging the right to vote for reasons of race or color. If the court determines that

neither the petitioner nor any person acting under color of law has engaged during such period in any act or practice denying or abridging the right to vote for reasons of race or color, the court shall so declare and the provisions of subsection (a) and the examiner procedure established by this act shall, after judgment, be inapplicable to the petitioner. Any appeal from a judgment of a three-judge court convened under this subsection shall lie to the Supreme Court.

No declaratory judgment shall issue under this subsection with respect to any petitioner for a period of 10 years after the entry of a final judgment of any court of the United States, whether entered prior to or after the enactment of this act, determining the denials or abridgements of the right to vote by reason of race or color have occurred anywhere in the territory of such petitioner.

The Attorney General says that the States and counties affected by the formula "need only demonstrate in court that they are guiltless."

What court? The answer is, a three-judge district court convened in the District of Columbia.

Who will appoint that court? From whence will the judges be selected? Will they be judges from the District of Columbia, judges from the affected States, or judges from just anywhere in the United States? But here is the horrible part, and it is horrible.

What does the action brought in that court have to allege? It must allege that neither the petitioner nor any person acting under color of law has engaged during the 10 years preceding the filing or the action in acts or practices denying or abridging the right to vote for reasons of race or color.

(At this point in the proceedings Senator Hart left.)

The Attorney General says that the convicted States must only demonstrate that it is guiltless in order to "lift the ban."

The bill says that the State must allege that neither it nor any person acting under color of law has during the 10 years preceding the filing of the bill engaged in any act or practice contravening the 15th amendment.

What in the world does "any person acting under color of law" mean?

Even assuming that it means any person within the jurisdiction of the State, it is bad enough.

Of course, anyone who reads the bill knows that the so-called remedy is a will-o-the-wisp because even in Georgia during the last 10 years in 1 county of the 159 there has a decree of the Federal court to the effect that certain officials of that county did engage in acts and practices denying or abridging the right of certain people to vote by reasons of race or color (*United States v. Raines*, 382 U.S. 17).

I leave this written memorandum now and apply it perhaps more plainly than I can just from reading this. You take that section 3(a). You take that 3(c), and with the proof that I submitted to you here during this long day, and these cases that the Attorney General refers to, the two of them, don't you see that the State of Georgia for the sake of example, I don't know about any other State—well, I do know, I know Alabama, Mississippi, and Louisiana would fall too—the State of Georgia couldn't even bring that into suit.

The State of Georgia couldn't file that suit anywhere, even if a court were convening composed of anybody that the Chief Judge of the District of Columbia said to put on the court. Georgia couldn't bring that suit. Don't you see that it couldn't?

Senator DIRKSEN. Why?

Mr. BLOCH. Because it couldn't allege that no person within the jurisdiction of the State had a decree rendered against him in the last 10 years.

Senator DIRKSEN. What about any subdivision? It says any city or any political subdivision.

Mr. BLOCH. What does that mean?

Senator DIRKSEN. A subdivision.

Mr. BLOCH. Doesn't that mean that before Georgia can come into any court, it must allege that no officer of the State of Georgia in any one of the political subdivisions has been found guilty of violating the 15th amendment? That is what 3(c) says. Read it.

Senator DIRKSEN. I have read it.

Mr. BLOCH (reading):

Any State with respect to which determinations have been made under subsection (a) may file in the three-judge district court alleging—

I am reading from the bill, Senator—

that neither the petitioner nor any person acting under color of law has engaged during the 10 years preceding the filing of the action in acts or practices denying or abridging the right to vote for reasons of race or color.

Then it says, and I am reading from the law here and from the bill:

No declaratory judgment shall issue under this subsection with respect to any petitioner—

which would be the State of Georgia—

for a period of 10 years after the entry of a final judgment of any court of the United States whether entered prior to or after the enactment of this act determining that the denials or abridgments of the right to vote by reason of race or color have occurred—

were—

anywhere in the territory of such petitioner.

Senator ERVIN. Mr. Bloch, from the testimony the Attorney General gave here about the decisions in courts, not only would Georgia be totally barred from suing for a 10-year period; Alabama would be totally barred from suing, Mississippi would be totally barred from suing, and Louisiana and Georgia, too.

In five of the six States that are totally covered, not only are the courthouse doors, in the region in which those States exist, shut against them, but you would have even the courthouse door up here in the District of Columbia nailed shut against them, would you not? Every State except the State of Virginia?

Mr. BLOCH. Yes, sir.

Senator DIRKSEN. Mr. Bloch, Judge Ervin pursued that matter at great length with the Attorney General. What is your notion about whether or not it is so offensive that it is brought in the District of Columbia before a three-judge court in order to cleanse themselves of this stain if that is the way one should put it? Or is it more desirable to have a three-judge court in the State where the allegation would be brought? Is that your principal objection to it?

Mr. BLOCH. No, sir. My principal objection goes way back of that. My principal objection is that 3(c) creates an invalid presumption. That the opportunity to be heard, if you are going to have any pre-

sumption at all, that the presumption ought not to take effect until you have had an opportunity to be heard. That under the decisions which I cited to you, the *Bailey* case, the *Henderson* case, the *Gainey* case of last week, that those cases all hold that there can't be a valid presumption, a person can't be found guilty on a presumption unless he is given an opportunity to rebut that presumption prior to the verdict of guilty.

Now what happens in this bill, the presumption creates, I think, such a presumption that the verdict of guilty is demanded before he has any opportunity to be heard. That is my principal objection.

Senator DIRKSEN. We don't think so. We think this is only a cleansing section to give a State a chance to offer evidence and testimony, or for a subdivision to do the same thing.

Mr. BLOCH. The bill doesn't say so.

Senator DIRKSEN. The only objection as we have heard before was the long trek to the District of Columbia to a strange jurisdiction. That is the reason for my question whether or not it would be more palatable if you had a three-judge court sitting in Georgia for that purpose.

(Senator Hart returned to the hearing room.)

Mr. BLOCH. I think if you are going to have any three-judge court at all, the three-judge court ought to come before the presumption ever has any impact at all. But even then I don't think it would be valid.

Senator ERVIN. I would like to state I didn't raise this point. I had my attention diverted to so many other inequities in the bill I never saw the point you made. But your point is that not only as far as Georgia is concerned and Alabama and Mississippi and Louisiana —

Mr. BLOCH. They can't even get into court.

Senator ERVIN. That they can't even get into court. They have the doors of the courthouse shut against them in those States, in the district courts. Not only has the circuit court door been nailed shut against them, but they have even nailed shut the door of the District of Columbia court against them for 10 years.

This bill has a provision in section 3(c), and section 11(b) which says that the only court that can have jurisdiction of any cause of action which a State may wish to bring, or a political subdivision of a State may wish to bring, or any other person may wish to bring to protest against the tyranny which this bill would inflict upon them shall be the District Court of the District of Columbia sitting as a three-judge court.

It says in section 9(d) and again in section 9(f) that every court in the land is open to the Government. All the courts are closed except one against everybody but the Government. Every court is open to the Government.

Do you not agree with me that about the mildest way you can characterize that position is it is a prostitution of the judicial process?

Mr. BLOCH. I do. The only time I ever knew anything like that would be during the wartime when we had the emergency price control statute which was considered by the Congress during wartime, and the emergency price control, the rent control and the price control, had a provision in it that the only place that it could be tested was in an emergency court of appeals which was created by the act.

That position was upheld under the decision of the Supreme Court of the United State in *Yockles v. Phillips*, and was upheld in two cases, one which came up from Macon—

Senator ERVIN. The *Yockles* case?

Mr. BLOCH. That case came from Boston and a companion case to the *Yockles* case was my case again of *Bowles v. Willingham*, 321 U.S. That was upheld as a war measure, and on the theory that the Congress had the right to deprive the district courts of any jurisdiction they wanted to deprive them of. They created them. They had a right to confer or take away jurisdictions. That was the theory of wartime measure and that is the only time I have ever known it.

Senator ERVIN. And that case involved the validity of rules of the OPA which had the force and effect of law throughout the United States, did it not?

Mr. BLOCH. Yes, sir. That emergency court of appeals would meet all over the country, it did meet several places.

Senator ERVIN. Do you not think that it makes a mockery of the judicial process for an act of Congress to say that the Government shall have access to every court in the land, but those who the Government is proceeding against shall have access to only one court, which in some cases is located a 1,000 miles from where they live?

Mr. BLOCH. I would certainly say it doesn't give to the States due process of law. Whether we have created a mockery or not it certainly didn't give them the rights they are entitled to under the Constitution.

Senator DIRKSEN. But Mr. Bloch, you will agree, of course, that the creator can do what he pleases with the creature. If the Congress can create all the inferior Federal courts, district, circuit courts of appeals, special courts, then, of course, it can delimit or expand their jurisdiction, so this is the exercise of a valid power in placing the appellate jurisdiction here in the District of Columbia. You don't quarrel with that principle?

Mr. BLOCH. I don't quarrel with the proposition that the Congress has the right to do anything it pleases with the court it creates. The inferior courts are created by the Congress, and it can deprive them tomorrow of all of their jurisdiction. I don't quarrel with the proposition that the Congress has the right to absolutely limit the appellate jurisdiction even of the Supreme Court of the United States.

But I do quarrel with the proposition that when the Attorney General says that Georgia need only demonstrate in court that they are guiltless in order to ban the provisions of section 3(a) from their registration system, that that isn't correct, because from the analysis of the facts that I have given you, if you follow them, you can readily see that Georgia could never get into court. Senator Ervin points out neither could Alabama, Mississippi, or Louisiana, because for 8 years in its 159 counties there have been two decrees rendered which would keep them out of court.

Senator ERVIN. And Mr. Bloch, don't you agree with me that the question whether somebody is guilty is a judicial question to be decided by a court and not to be settled by a congressional hearing?

Mr. BLOCH. I certainly do, sir, and I can go back and see if there is going to be any presumption created at all, that the accused, which in this case is the States, all the States in the Union, not only the Southern States, that the accused ought to have a chance to rebut that

presumption before it is conclusively presumed that he is guilty of anything.

The CHAIRMAN. The remedy here is a hoax.

Mr. BLOCH. The remedy in court. If an act provided if only 50 percent didn't vote last November, it will be presumed that you have violated the 15th amendment, and thereupon the Attorney General would have the right to bring an action to set aside your voting statute and give you an opportunity to be heard, that would be bad enough, but it would at least do a way with the constitutional objections that I see here, because you would have an opportunity to be heard before the impact of a presumption is felt.

As it is now, Senator, it is just like saying to a man, "You are presumed to be guilty if such and such a fact is proven," and the presumption takes hold. All right, now after you get in jail, you may file a petition for habeas corpus in the District of Columbia, even if you are convicted in California. You may file a petition for habeas corpus in the District of Columbia and show that that presumption ought not to have been applied to you.

Now that might sound far fetched, but that is just exactly what this bill does. We can't even file the petition, because those cases keep us from it.

Senator DIRKSEN. Mr. Bloch, at this point this is a good place for you to suggest how these counties, where the presumption has been raised, on the basis of registration and votes, will cleanse themselves. It is said you have been naughty people, you have discriminated here against the 15th amendment. You have denied and abridged the voting rights of the citizens of the United States, so we are going to give you a chance to get out from under your sin.

Now this is the way we propose to do it. You say it just won't work, that it is unconstitutional, that those allegations cannot be made. In my book this is just a question of proof that has to be made by the obdurate sinner. You say it won't do. All right, what in your judgment will do?

Mr. BLOCH. I don't think anything would do along those lines.

Senator DIRKSEN. What?

Mr. BLOCH. I think you have got to go back further than that. I am just taking it step by step. I don't think that a bill ought to be passed that creates any presumption, without giving the accused the right to be heard. Even in that *Still* case that I mentioned, I believe you were asked, that was decided on March 1, the *Gainey* case decided by the Supreme Court of the United States on March 1, it was a presumption that anybody who was caught at a still, an illicit distillery, was guilty of having something to do with that distillery.

But even that presumption does not take hold until that accused, that person who didn't have any more sense than to be around that still, had an opportunity to explain his presence there.

Senator ERVIN. Before that presumption took effect there, they had to bring them into court and show in court that he was caught at the still. Here they do not even bring him to court, but they raise the presumption without even giving him the opportunity of being brought to court.

Mr. BLOCH. And do not ever give you an opportunity.

Senator ERVIN. It has been the custom in America thus far that before you condemn a person and before you punish him and deprive him of his rights, you make a charge against him and convict him in court, of wrongdoing. This has been the custom, has it not?

Mr. BLOCH. Yes.

Senator ERVIN. And it is the American way to do this, is it not?

Mr. BLOCH. We had a statute in Georgia that if any person were hurt or killed by the running of a train, the railroad company was presumed to be negligent. And while they had an opportunity to offer proof, the Supreme Court of the United States declared that unconstitutional. That is in the *Henderson* case.

So it is, therefore, that if the ban were placed on Georgia, Georgia could not lift that ban because in one of her 159 counties there has been a court decree.

The same applies to any other State affected by this bill. The Attorney General knows and you know that in some of the counties and/or parishes of Mississippi, Alabama, and Louisiana, there have been such decrees.

Under this bill, decrees in perhaps 10 or 12 counties—the Attorney General can supply the exact figure—out of the 300 or 400 affected effectually prevents any lifting of the ban.

Time does not permit the present document to go into details of the act beyond section 3 thereof.

As a matter of fact, most of the other sections fail when section 3 shall have been deemed or declared invalid.

However, there is one glaring section to which attention should be called. That is section 8. It reads as follows:

Sec. 8. Whenever a State or political subdivision for which determinations are in effect under section 3(a) shall enact any law or ordinance imposing qualifications or procedures for voting different than those in force and effect on November 1, 1964, such law or ordinance shall not be enforced unless and until it shall have been finally adjudicated by an action for declaratory judgment brought against the United States in the District Court for the District of Columbia that such qualifications or procedures will not have the effect of denying or abridging rights guaranteed by the 15th amendment. All actions hereunder shall be heard by a three-judge court, and there shall be a right of direct appeal to the Supreme Court.

The purported object of this bill is to prevent the application of voting qualifications or procedure so as to deny or abridge the right to vote on account of race or color. The contention is that voting qualifications and procedures are being imposed or applied so as to deny 15th amendment rights.

Yet, the bill provides that if it is determined under section 3 (a) and (b) that a State or political subdivision is using tests or devices for discriminatory purposes, that no State may enact any law or ordinance even repealing the offending test or device, or rather, that if it does enact such law or ordinance, it shall not be enforced by the State unless and until it shall have been finally adjudicated by an action for declaratory judgment brought in the District Court for the District of Columbia that such qualifications or procedures will not have the effect of denying or abridging rights guaranteed by the 15th amendment.

Now, here is how section 8 would work in some of the States which possibly may be affected by the bill.

Suppose it is declared by the Attorney General that those registration laws which contain voting qualifications fall under the ban of section 3(a). The State says to the Federal Government, all right, you are accusing us of using our registration laws so as to deprive Negroes of their right to vote; a great many of the States of the Union do not have any registration laws, so we will go along with those States and repeal our registration laws. And that is what the States do. But here comes section 8. That repeal of the registration laws cannot become effective until a three-judge court in the District of Columbia, selected by someone, adjudicates that the repeal of the offending statute will not have the effect of denying or abridging rights guaranteed by the 15th amendment.

I imagine that for the first time in the history of constitutional government anywhere, it is being suggested that the Congress has the right indirectly to enjoin a State legislature from repealing one of its laws.

In the last 2 or 3 days, I have read the following:

But why suppose the irreconcilability of the two propositions?

Proposition 1: The States have the right to prescribe voter qualifications.

Proposition 2: No State may discriminate against a racial minority.

What, then, if a State, in the cause of practicing its rights under the first proposition, denies the rights of Negroes under the second? The Federal Government should precisely step in and legislation to this effect should be passed—but its mandate should then be, not to revoke voter qualification tests as set up by the States, but to administer them without reference to race or creed.

I suggest that the author of that column—and I respectfully suggest every Member of Congress—read title I of the Civil Rights Act of 1964, entitled, "Voting Rights." (42 USC, sec. 1971, as amended by sec. 181 of the 1957 Act and 1960 Act and 1964 Act.)

That statute, approved July 2, 1964, provides that no person acting under color of law shall * * * employ any literacy test as a qualification for voting in any Federal election unless (1) such test is administered to each individual and is conducted wholly in writing, and (2) a certified copy of the test and of the answers given by the individual is furnished to him within 25 days of the submission of his request made within the period of time during which records and papers are required to be retained and preserved pursuant to title 3 of the Civil Rights Act of 1960.

That act has been in force for almost 9 months.

Has any person anywhere been accused in any criminal proceeding or in any civil proceeding of violating that act? Does the Department of Justice know of any violation of the act?

Why does not that act give to the Department of Justice every power that it needs to insure that voting tests or devices will not be used at any time or place so as to deprive Negroes of their 15th amendment rights? Has any effort been made to use it?

I have been taught, "If thy right hand offend thee cut it off, and cast it from thee" * * * St. Matthew, chapter 5-30.

If any statutes which give rise to the accusation that their use offends the fifth amendment are offensive to the Department of Justice, it ought at least give the privilege of cutting them out, and casting them aside.

This act does not even let us do that. The minute the impact of the presumption is, and Georgia and no other State affected by the

act can change any of its election laws or voting laws without the permission of a three-judge court set up somewhere in the District of Columbia—

Senator ERVIN. Mr. Burke Marshall, who was head of the Civil Rights Division in the Department of Justice for some years, made a statement before the Civil Rights Commission on February 18, 1965, and he said this:

It is evident that the time required to litigate 1971(a) cases is being sharply reduced.

Then he refers to that provision you referred to.

The expediting provisions of the 1964 act promise to accelerate the pace of litigation. Indeed there is one case involving Holmes County where the complaint was filed at the end of July, our discovery motion was granted within a month, the defendant's answer and the trial date was set for early November.

Now, I would like to ask you this. The only reason we hear for the provision of this bill which would nullify or suspend—whatever you choose to call it—section 2 or article I of the Constitution and the 17th amendment, and the provision securing to the States the rights not vested in the United States by the Constitution—is that it requires too much time to litigate a case in court. I will ask you if that is not exactly the same argument or rather the same justification which a mob uses when it lynches a man. It says, "We know this man is guilty, and we are not going to waste any time trying him because it will take some time."

Is that not exactly the argument of a mob?

(At this point in the proceedings, Senators Kennedy and Dirksen left the hearing room.)

Mr. BLOCH. Yes, sir; I wanted to confine my arguments here today so much that I omitted something that I had in the first draft of this. The first draft of this said what this ought to be called was a State lynching law, a law to provide for the lynching of certain States, and that is what it does.

I appreciate the opportunity of being here.

The CHAIRMAN. You have made a very fine statement, Mr. Bloch. I gave instructions that it be copied in the record.

Senator ERVIN. I share your concern about these things. I remember in the foreword of a very fine book you wrote on constitutional law that you dedicated, as I recall, to your two grandsons, with a prayer that when they arrived at maturity, that they would still enjoy constitutional government in America.

Mr. BLOCH. To my grandsons and those of their age, with the hope that constitutional government may survive.

Senator ERVIN. Do you think constitutional government can survive if the Congress is willing to pass laws that suspend the operation for a 10-year period of three provisions of the Constitution, even if they assign for such action their desire to enforce another section?

Mr. BLOCH. No, sir; I do not think so, and I do not think constitutional government can survive if any person arrogates unto himself—any person or community or group, whatever you call it—arrogates unto themselves or himself or herself the power to determine which law they will observe and which law they will not observe.

Senator ERVIN. Now, I called attention to the fact that North Carolina has 76 percent of the people of voting age registered, and called

attention that notwithstanding the fact that 34 counties fell below the 50 percent in voting, the State itself voted 51.8 percent. I suggest that shows that North Carolina is not discriminating against anybody. But the suggestion is made by very highly intelligent men that perhaps that shows that North Carolina is intimidating people.

Do you see any rational basis for drawing any inference of that nature from these sets of figures on North Carolina or any of these other States that they are intimidating anybody to keep them from voting because of their race?

Mr. BLOCH. No, sir.

Senator ERVIN. After a State registers 76 percent of the people of voting age and thereby adjudicates that they are entitled to vote, do you not think it is rather absurd to infer that because those people do not see fit to come out and exercise their privilege in certain counties, that that constitutes evidence or a presumption or an assumption that there is intimidation which keeps them from the polls after they are registered?

Mr. BLOCH. Just a complete non sequitur, that is all.

The CHAIRMAN. If this principle, the principle in this bill is established, what other fields can the Federal Government go into?

Mr. BLOCH. What fields?

The CHAIRMAN. What fields can it go into?

Mr. BLOCH. I mentioned this morning one, the taxation field; the taxation field, the jury system, the educational system, most any other area of State law.

The CHAIRMAN. Criminal laws?

Mr. BLOCH. Criminal laws. Suppose, for the sake of example, take in the field of education. If the principle of this bill is followed, then on the same thesis or on the same premise a presumption could be built up that the States are violating the education laws, and therefore, having violated the education laws, they cannot pass any more education laws, and the Federal Government will step in under the guise of enforcing the 14th amendment or the 15th amendment, and prescribe education laws, tax laws, jury qualifications, just any area in which the States now under the 10th amendment have the right to regulate their own affairs can be invaded by the Federal Government under the guise of enforcing some constitutional provision.

The CHAIRMAN. If this principle is sustained, what is left to the States?

Mr. BLOCH. Nothing.

The CHAIRMAN. That applies to all 50 of them.

Mr. BLOCH. It applies to all 50. It applies to all 50 in every area covered by the 10th amendment and any other provision.

The CHAIRMAN. What we would have is a complete central government.

Mr. BLOCH. You would have a complete federalized central government. You would just as well wipe out your State lines if this theory of legislation is held constitutional.

The CHAIRMAN. And after all, that is the fundamental principle that is at issue here, is it not?

Mr. BLOCH. That is the fundamental principle here. As I said somewhere in the course of that argument, the States created the Federal Government and delegated to the Federal Government certain

power, reserving unto themselves all other powers not expressly delegated. If the principle of this bill is held constitutional, then that creature of the several States has got within its power to destroy the 50 States which have succeeded those 13 that created it.

That is it in a nutshell.

Senator ERVIN. I will ask you if section 2 of article I of the Constitution has not been a part of the Constitution ever since George Washington took his first oath as President back in 1789, a period of 178 years? I will ask you if every decision of the Court since that time has not held that under that provision of the Constitution the States have the constitutional power to adopt a literacy test applicable to people of all races?

Mr. BLOCH. Right on down through the years through the last one that I know of written by Justice Douglas, who is certainly not an enemy of centralized government, in the *North Hampton* case.

Senator ERVIN. When you analyze it this bill constitutes an effort to suspend the power of the States to exercise the power given them by the Constitution of the United States?

Mr. BLOCH. Precisely.

Senator ERVIN. I want to thank you for coming here and making a fight for constitutional government. Judge Learned Hand said that when love of liberty dies in the hearts of the American people, no Constitution and no court can keep it alive.

Do you not agree with me that it is a very sad thought that when respect for constitutional principles dies in the hearts of men occupying high office in the United States, constitutional government is on its way out?

Mr. BLOCH. Yes, sir; and I believe—I honestly and firmly believe—that if application could be thrown out of the window in the consideration of this bill, if that were possible, and if the Governors and the attorneys general of the 50 States of this Union, not only the six down South, but if the attorneys general and the Governors of the 50 States of this Union would take time to realize what this bill does and what it might be, what the portent of it is, that they would be sitting right here where I am sitting arguing with you right along the same line.

Senator ERVIN. They are in a big hurry to pass this bill, so they say. It reminds me, with all due respect to my brethren who advocate this bill, of a story of Irving S. Cobb. He went into this store to buy a necktie. They offered to sell him a very loud necktie, and he pushed it away saying he did not want that kind of a necktie. And the clerk kept trying to sell him that particular necktie. Finally Irving S. Cobb said:

I do not want that tie. I would not be caught wearing it down in the bottom of a coal mine at 12 o'clock midnight during a total eclipse of the moon while John L. Lewis and the United Mineworkers were out on strike.

Now, I do not blame them for wanting to pass this bill. But I would not want to be caught with this bill in my possession down in the bottom of a coal mine at 12 o'clock midnight during a total eclipse of the moon while John L. Lewis and the United Mineworkers are out on strike.

Mr. BLOCH. I wonder if April 9 as the deadline has any significance. That was Appomattox, was it not?

Senator HART. Mr. Chairman, I have no questions. I do want to thank Mr. Bloch, whom I have enjoyed hearing on earlier occasions in discussion of the prior civil rights bill, for coming up again. I know he feels very deeply, as do several members of the committee here present, that the constitutional points he made are valid. Under that conviction he feels deeply that the bill proposed is unconstitutional. As I say, I have no questions, but as a lawyer I think I should explain very briefly why I disagree. And the fact, though I do not know it, that April 9 is Appomattox day has an effect on each of us, though our conclusions are different.

The bill implements the explicit command of the 15th amendment, as I see it, that the right to vote shall not be denied or abridged by any State on account of race or color. I think that the means chosen to achieve that end are appropriate and necessary, and the bill has only one aim, to effectuate a good many years after Appomattox the promise of the 15th amendment, that there shall be no discrimination on account of race or color with respect to the right to vote. That really is the only purpose of the bill.

I think, therefore, that it is legislation designed to enforce the 15th amendment, and I think that the means suggested in the bill are appropriate.

The President submitted the bill only because he feels it imperative that we deal in this way with the discrimination that persists despite determined efforts to eradicate the evil by other means, the means that brought you to this committee in 1957, 1960, and 1964.

It is only after long experience with lesser means and a discouraging record of obstruction and delay that we now resort to this more far-reaching solution.

We had better have an answer before those grandchildren of yours are active in the scene because time—which has run really very slowly in this field for almost 100 years—is about to run out on us, before the grandchildren get here, if we do not resolve this question.

I guess my statement is in the nature of a defense as a lawyer. As to why, while I have listened attentively, I still share the feeling of the Attorney General that this is responsive to a very urgent need.

Mr. BLOCH. Senator, down our way they tell a story about a lawyer who had a case in court before a certain judge, and he was a good judge, too. When the lawyer finished announcing his proposition of law, the judge said, "Mr. Moore, that is not law." Mr. Moore, the lawyer, said, "Well, Your Honor, it had been for a thousand years before Your Honor spoke."

So I am pretty much in the same situation as Mr. Moore. I have no right to argue with you whose guest I am, so to speak, but whenever I hear about the 100 years after the adoption of the amendment, I cannot help but think of the constitutionally legal history that has gone along during those 100 years.

Appomattox has come into the conversation. It was April 9, 1865. The 13th amendment was adopted in 1866. The 14th amendment came along in 1868.

(At this point in the proceedings, Senator Dirksen entered the hearing room.)

Mr. BLOCH. The 15th amendment came along in 1870. Now, within 2 years, Senator, after the adoption—within 3 years after the adop-

tion of the 14th amendment, the Supreme Courts of the States of Ohio and of Indiana and of California, and soon after, the Supreme Court of Appeals of the State of New York, the Decision of Judge Woods in a Federal court down in New Orleans—Judge Woods afterward was appointed to the Supreme Court of the United States after he had rendered that decision—in all of those cases the 14th amendment was construed, and a separate but equal doctrine was set up.

Now, during those 100 years we obeyed the law of the land. We obeyed what those courts had said the 14th amendment meant. In 1895 and 1896 in *Plessey v. Ferguson*, the Supreme Court of the United States for the first time adopted the separate but equal amendment. We took that to be the law; not only in the southern States but all over the United States they took that to be the law of the land because the Supreme Court of the United States had said so. As late as 1917 when Chief Justice Taft was Chief Justice of the U.S. Supreme Court, after he had been President, the Supreme Court of the United States in *Garland against Rice* in 1927 reaffirmed all those cases that I mentioned, and more too, and said that the separate but equal doctrine was the law of the land.

It was not until 1954, almost 100 years after the adoption of the 14th amendment, 88 years after the adoption of the 14th amendment, that for the first time the Supreme Court of the United States said that the separate but equal doctrine was not the law of the land.

I suggest to you, sir, with all respect, that when you think of the 100 years of that century, bear in mind, sir, that during 88 years of that 100, that the Supreme Court of the United States, and all other courts that had passed on the question, had construed the 14th amendment to mean just what we down in the South thought it meant and followed, and it was not until 1957, almost 100 years after its adoption, that the Court changed its mind.

Sometimes I think maybe I am partial, but sometimes I think that we are more sinned against than sinning.

Senator HART. As I say, I have no questions, and if I commented we would just exchange differing views again.

Senator ERVIN. Mr. Bloch, do you not think that a State is more likely to have its citizens understand the history of the last 100 years if it requires them to read and to write before they are allowed to vote?

Mr. BLOCH. I did not hear that, sir.

Senator ERVIN. I said do you not think that a State is more likely to have its citizens understand the history of the last 100 years if it requires them to read and write before they are allowed to vote?

Mr. BLOCH. Yes, sir, I rather think so.

Senator ERVIN. And then they can determine from history for themselves, and they will not have to depend on what the politicians say in an election as to what is happening.

Mr. BLOCH. They cannot learn their law from television.

Senator DIRKSEN. But, Mr. Bloch, they had one of these literacy tests in one of the States that was brought up here not so long ago—I wish I had the details in mind—by one of the instructors in a neighboring college. There were five questions that were asked, and it involved interpretation. There was not an advanced student in that civics or history class that could answer those five questions.

Now, would you regard that as discrimination or what?

Mr. BLOCH. Yes, sir. I would regard it as discrimination, and I would regard it as discrimination which the Congress has given the tools to the Attorney General to meet if he wanted to use them.

One of the classic examples of that, Senator, was the supposed story that a person was asked what certiorari meant in one of the literacy tests, and he said "It means I do not vote."

But things of that sort all came up in all of these cases that we tried down there in the lower courts. In this Terrell County case we had your very question. We had questions of that sort, and Judge Bodell held that certain of those practices were discriminatory, and he ordered certain names put on the roll, and I think four names—I am not sure of that, but whatever the number was, he ordered them put on the roll, and they were put on the roll, which demonstrates that when such tactics as those you have mentioned are used, that there are remedies on the statute books for their correction if the Attorney General wants to use them.

Senator DIRKSEN. Now, you have been a wonderful and patient witness. You have only omitted one thing. You have not told us how to quickly and effectively lick this discrimination issue.

Mr. BLOCH. How quickly what?

Senator DIRKSEN. To lick this discrimination issue.

Mr. BLOCH. I did not hear that question.

Senator DIRKSEN. I said you have been a patient and wonderful witness, but you have omitted to tell us all day today how to lick this issue of discrimination.

Mr. BLOCH. I did not admit the issue of discrimination anywhere. I said in that particular case there would be discrimination, like there was discrimination in this case. But if you took what I said to admit discrimination, I did not understand your question because I specifically denied all through my testimony—I specifically denied the statement that there has been widespread discrimination in the State of Georgia. I do not know about any other State. I have my ideas that there has not been widespread discrimination in any State of the South.

Senator DIRKSEN. Of course then we get into difficulties as to what constitutes widespread discrimination.

Mr. BLOCH. Well, the widespread has a very simple meaning to my mind. It means spread all over.

Senator DIRKSEN. But the 15th amendment does not use the word "widespread."

Mr. BLOCH. No, sir. The 15th amendment does not, but the Attorney General said that the reason he wants this bill directed at these six States was because he knew that there was widespread discrimination in those States, regardless of any formula or any proof either, I say, and I say there is not. If there is, then the remedies exist to correct it.

The CHAIRMAN. Adequate remedy.

Mr. BLOCH. Sir?

The CHAIRMAN. Adequate remedy.

Mr. BLOCH. Adequate remedy, 1957, 1960, and 1964.

Senator DIRKSEN. Have you any suggestion as to where we will find enough lawyers and enough courts in order to run down all these cases?

Mr. BLOCH. I do not think that you would need very many lawyers. You have got some mighty good ones. The lawyer that was on the opposite side of that Terrell County case from me is a wonderful one. If there had been any discrimination in Georgia up to that time, why I think the decision in the Terrell County case ended it, even if there had been widespread discrimination, which there was not, proven by the fact that the Negroes register and they vote, and the tests in every county that I know of, the tests that are given to them are just as they are given to white people now, since that decision in 1961.

I do not say that there is not discrimination somewhere. I would not say that because I do not know it. But I say whatever the discrimination is, whenever it is ferreted out, there are adequate tools on the statute books to cope with it, and you can get plenty lawyers, too, to man the guns, if there is a need.

Senator ERVIN. I would just like to ask you one question about a somewhat kindred matter which sometimes arises in the courts. That is the question whether Negroes have been systematically excluded from juries. It does not take but a few hours to try and hear and determine that question, does it?

Mr. BLOCH. No, sir.

Senator ERVIN. And so you could try election cases the same way, could you not?

Mr. BLOCH. That question is up right now down in my county as to whether or not there has been any discrimination. The case was argued before the superior court judge, which corresponds to your circuit court judge, last Tuesday and Wednesday. I suppose there has been a decision since I left home.

But as far as my own county is concerned, the law is being observed. I do not know how they do it. I do not know how they can expect to do it when they cannot put "colored" or "white" by the name of a person, how they can be expected to tell whether they have got an equal number of colored people on the juries.

Senator ERVIN. That is the reason I was very much amused by the Attorney General's complaints here the other day that Mississippi did not put the names of people by race upon their registration books. The *Raines* case enjoined the State officials of Georgia from doing that very thing.

Mr. BLOCH. There it is right there, the different colored cards. They cannot do that anymore.

Senator ERVIN. They blow hot and they blow cold, but they are always blowing at some Southern States, are they not?

Mr. BLOCH. Yes. Hang your clothes on a hickory limb but do not go near the water.

Senator HART. Before you drop the gavel, let me ask on this Terrell County case, is it not possible or would you agree that the successful Terrell County case contributes less to the Negro registering and voting than the fact the Colonel Penn was shot to death going through Georgia and nothing has happened, this overriding realization of the threat of violence around the corner. I think we all recognize that that exists.

Now, what suggestion do you make with respect to that?

The CHAIRMAN. The violence in the State of Georgia does not compare with the violence on the city streets in Detroit.

Senator HART. Whatever the rate of comparison is, the participation in the ballot box in Michigan is free and easy. I am asking Mr. Bloch—who has been telling us about the tools that are available in the hands of the Department of Justice now to permit full exercise of the franchise—to make a suggestion as to how we proceed to eliminate what I insist the record shows is a pervading atmosphere of “You had better not try it, boy. If a woman from Michigan goes down to help you, she had better stay home.”

Mr. BLOCH. Let me say this. That I see no connection whatsoever—

Senator HART. Well, I see the most intimate connection.

Mr. BLOCH. I see no connection whatsoever with the murder of Colonel Penn and the deprivation of Negroes' voting. But assuming that there is a connection, and answering your question, if I had the power to attempt to solve the problem of disobedience to law and order—not only in these particular Southern States but in your State, in New York, in California, even here in the District of Columbia, or anywhere—if I had the sole power to try to cure that, and it ought to be cured, what I would do would be to pass a constitutional amendment that notwithstanding anything in the 1st amendment or notwithstanding anything in the 14th amendment, that the Congress of the United States had the power to enact laws to stop the prevalence of crime throughout the country.

My own idea is one of the things that is responsible for the wave of crime throughout this country is the protection that is being given to criminals, to would-be criminals, under the 1st amendment, under the 5th amendment, and under the 14th amendment.

I think that any person who advocates directly or indirectly the overthrow of the Government of the United States ought to be punished, and he ought to be tried and punished regardless of anything that is in the 1st amendment or the 5th amendment or the 14th amendment.

And yet we have language in the Supreme Court of the United States opinions which indicate that it is perfectly all right for a person to advocate overthrow of the U.S. Government.

Senator HART. Mr. Bloch, under the 15th amendment, do you not feel that it is presently within the legislative power of the Federal Government to provide that anyone who uses violence or its threat to persuade some citizen not to vote, not to register, not to participate in registration and voting efforts, do we not now have the authority to impose the heaviest of sanctions on the use of that without any constitutional amendment? I am talking now about under our 15th amendment.

Mr. BLOCH. I think with the limit of power of the Federal Government in that respect is speeded in the *Cruikshank* case in 92d U.S. or in the *Galbraith* case in 110 U.S. It distinctly says just what the power of the Federal Government is with respect to the 15th amendment on intimidation of voters.

If you would read it, I think it spells it out a whole lot more clearly than I could state it.

Senator HART. In brief, do you feel that under those cases the Federal Government has the authority to impose the heaviest of sanctions

on anybody who reaches out and clobbers somebody who is trying to vote?

Mr. BLOCH. Well, the 15th amendment says that no State shall abridge or deny.

Senator HART. Your position is that we do not with respect to an individual unless he is acting under color of law?

Mr. BLOCH. That it does not affect individuals. Now, that is where you might need a constitutional amendment, because of the impact of provisions like that in the 15th and in the 4th and in the 1st amendments.

Senator HART. Then you would, in addition to the testimony you have given us with respect to other sections of this bill—

Mr. BLOCH. I could not hear that.

The CHAIRMAN. Speak a little louder.

Senator HART. You would argue that section 9 of the administration bill is also unconstitutional, I take it.

Mr. BLOCH. I do not remember section 9.

Senator HART. It provides that anyone who attempts to deprive a person of a right created by this act shall be fined \$5,000 and imprisoned not more than 5 years, or both.

Mr. BLOCH. What I would do in my reading—

Senator HART. This does not have to do with anybody acting under color of law.

Mr. BLOCH. In my reading of it, I had not gotten to section 9, because I had to prepare this before I came up. But what I would do with section 9, if I had to give an opinion on it, and I would not try to give it offhand—what I would do would be to take section 9 and measure it by the decisions of the Supreme Court of the United States in the *Cruikshank* case and in the *Farbrough* case and that would be my yardstick.

If the Supreme Court of the United States had held—I would apply those two cases to this section 9, and it would be either valid or invalid under those cases, because I think they are the law of the land.

Senator HART. Did I understand you to say that in preparing your testimony you had not had opportunity to analyze that section?

Mr. BLOCH. No, sir, I have not. I will be glad to do it and supplement it.

Senator HART. What other sections of the bill had you not had opportunity to analyze?

Mr. BLOCH. What I did was to go down through, as I said in the memorandum—what I did was to go through section 8(c) very carefully—as carefully as I could—and then somebody told me about section 8, and I went over section 8 and dealt with that in the memorandum, and my memorandum is confined to the bill through section 8(c) and section 8.

I will be very glad to have the opportunity to honestly try to answer your question and read section—which section was it, sir, section 9?

Senator HART. It is a 13-section bill, and you have analyzed 4 of the sections you say.

Mr. BLOCH. I will be delighted to supplement it with a statement.

Senator HART. Very well.

(Subsequently, the following information was received:)

SUPPLEMENTAL MEMORANDUM PREPARED BY CHARLES J. BLOCH WITH RESPECT TO
SECTION 9 OF S. 1564

Section 9 of S. 1564, especially section 5(a), applies to all persons regardless of whether or not they are acting under color of State law. Section 9(a) specifically provides that "Whoever shall deprive or attempt to deprive any person of any right secured by section 2 or 3 or who shall violate section 7, shall be fined not more than \$5,000, or imprisoned not more than five years, or both."

Section 7 provides: "No person, whether acting under color of law or otherwise, shall fail or refuse to permit a person whose name appears on a list transmitted in accordance with section 5(b) to vote, or fail or refuse to count such person's vote, or intimidate, threaten, or coerce, or attempt to intimidate, threaten or coerce any person for voting or attempting to vote under the authority of this Act."

For its efficacy, section 5(b) depends upon section 4 which in turn depends upon the validity of section 3(a). So, basically, if 3(a) falls, 4, 5(b), 7, and 9 fall.

Furthermore, section 5(b) falls as being in palpable violation of article I, section 2 of the Constitution, especially when construed in connection with section 5(b).

All of these sections, by one method or another, seek to avoid what has been an established principle of constitutional law, to wit: The States and only the States may prescribe qualifications for voters.

Aside from this fundamental vice, the breadth of sections 9 and 7 causes them to exceed the powers granted to the Federal Government by the 15th amendment. The 15th amendment relates solely to action "by the United States or by any State" and does not contemplate wrongful individual acts. Sections 7 and 9 seek to punish persons "whoever" they may be for certain conduct in connection with any election.

The language "intimidate, threaten, or coerce" in section 7 is strangely similar to the language, "injure, oppress, threaten, or intimidate" which appeared in section 5508 of the Revised Statutes considered by the Supreme Court of the United States in *Ex Parte Yarbrough*, 110 U.S. 652. I referred to this *Yarbrough* case in my appearance before the committee on March 29, 1965, as the *Ku Klux* case. I so referred to it, because Charles Warren, Esq., in his "The Supreme Court in U.S. History" (vol. II, p. 615) has this footnote to a discussion of the *Yarbrough* case (which was decided March 3, 1884): "The Ku Klux Klan gets no encouragement from the Supreme Court. It was decided yesterday, in the well-known Ku Klux cases that the Federal Government has power to prevent fraud and intimidation at elections. The most remarkable thing about these cases is that the question should ever have been raised." New York Tribune, March 4, 1884."

What the writer in the New York Tribune of 80 years ago overlooked, and what, perhaps, the authors of this bill hope that the Congress will now overlook, is that in the *Yarbrough* case, the Court was dealing with a particular election—one at which Members of Congress were elected.

At page 657 of the opinion, the Court said:

"Stripped of its technical verbiage, the offense charged in this indictment is that the defendants conspired to intimidate Berry Saunders, a citizen of African descent, in the exercise of his right to vote for a Member of the Congress of the United State, and in the execution of that conspiracy they beat, bruised, wounded and otherwise maltreated him; and in the second count that they did this on account of his race, color, and previous condition of servitude, by going in disguise and assaulting him on the public highway and on his own premises."

Further, on page 657, the Court spoke of "this election," and at page 661, "those elections."

The present bill seeks to control the actions of individuals, not acting under color of State law, not only with respect to congressional elections, as to which the Congress has a peculiar power, but with respect to all Federal, State, and local elections (sec. 3(a)).

In the very footnote from which quotation was made heretofore, following what has been heretofore quoted, is this sentence:

"But for a limitation of the power of Congress in respect to punishment of election offenses, see *James v. Bowman*, 190 U.S. 127, in 1903."

The limitation is not only as to the nature of the election, but is much broader. For, in *James v. Bowman*, 190 U.S. at page 136, the court categorically held that

the 15th amendment "relates solely to action 'by the United States or by any State' and does not contemplate wrongful individual acts."

Although the Solicitor General in his argument (p. 129) cited the *Yarbrough* case, the Court did not cite it in distinctly holding:

1. "These authorities show that a statute which purports to punish purely individual action cannot be sustained as an appropriate exercise of the power conferred by the 15th amendment upon Congress to prevent action by the State through some one or more of its official representatives, and . . ." (p. 139).

2. "Congress has no power to punish bribery at all elections. The limits of its power are in respect to elections in which the Nation is directly interested, or in which some mandate of the National Constitution is disobeyed, and courts are not at liberty to take a criminal statute, broad and comprehensive in its terms and in these terms beyond the power of Congress, and change it to fix [sic] some particular transaction which Congress might have legislated for if it had seen fit" (p. 142).

The statute there under consideration was:

"Every person who prevents, hinders, controls, or intimidates another from exercising, or in exercising the right of suffrage to whom the right is guaranteed by the 15th amendment to the Constitution of the United States, by means of bribery or threats of depriving such person of employment or occupation, or of ejecting such person from a rented house, lands, or other property, or by threats of refusing to renew leases or contracts for labor, or by threats of violence to himself or family, shall be punished as provided in the preceding section."

While the present bill does not speak so directly or succinctly, its essence is the same. It seeks to punish any person who intimidates, threatens or coerces any person (regardless of race or color) from attempting to vote or voting at any election, Federal, State, or local.

If really ours is a government of laws, and not of men, *James v. Bowman* forbids the enactment of any such law.

If ours remains a "government of laws," the supreme law of the land is the Constitution of the United States. Under that Constitution, the Senate of the United States is not only charged with the responsibility jointly with the House of Representatives of enacting legislation. It exclusively has the power of advising and consenting to the appointment of "Judges of the Supreme Court" and all other Federal judges. (Art. II, sec. 2, par. 2 of the Constitution.)

I respectfully suggest, therefore, that the Senate of the United States, and most particularly the Judiciary Committee of the Senate, ought to be particularly careful not to pass on to those who have been appointed or may be appointed with its advice and consent legislation which directly contravenes a decision of the highest court of the land. That decision was rendered 60 years ago, but in no applicable respect has the Constitution been changed. If that decision was wrong, or if the 15th amendment is not deemed sufficiently broad, the Constitution provides for its own amendment. Under the rule of that case, the sections as to which inquiry was made are clearly unconstitutional.

I respectfully call attention to language which the Supreme Court of the United States uttered a hundred years ago:

"Where questions arise which affect titles to land it is of great importance to the public that when they are once decided they should no longer be considered open. Such decisions become rules of property and many titles may be injuriously affected by their change. Legislatures may alter or change their law, without injury, as they affect the future only; but where courts vacillate and overrule their own decisions on the construction of statutes affecting the title to real property, their decisions are retrospective and may affect titles purchased on the faith of their stability. Doubtful questions on subjects of this nature, when once decided, should be considered no longer doubtful or subject to change. Parties should not be encouraged to speculate on a change of the law when the administrators of it is [sic] changed. Courts ought not to be compelled to bear the infliction of repeated arguments by obstinate litigants, challenging the justice of their well considered and solemn judgments. The decision of the Supreme Court of Michigan, in conformity with the opinion of this court twice pronounced on the same title, is hereupon affirmed with costs." (*Minnesota Company v. National Company* 70 U.S. 332, 334.)

Far more strongly is that rule true when the questions which have arisen affect not merely titles to land, but affect the supreme law of the land. Far more strongly is that rule true when prior decisions have become not merely rules of

property but rules of life, rules, in reliance upon which, a whole people have depended for their guidance, conduct, safety and well-being. Far more strongly is that rule true, when, if the prior decision is wrong, it may be corrected by an amendment to the Constitution. Far more strongly is that rule true, when the "obstinate litigant" is the Government of the United States.

Senator ERVIN. The 15th amendment only applies to action by a State which denies or abridges the right of a citizen to vote on account of race, color, or previous condition of servitude. It does not relate to the actions of individuals, even no matter how unlawful they may be.

Mr. BLOCH. That is right, and in one of those two cases that I mentioned, either the *Cruikshank* case or the *Yarborough* case, the point that Senator Hart raises was explicitly passed on one way or the other, and I will write the chairman as a supplemental memorandum, and do it tomorrow.

The CHAIRMAN. That will be fine. You have made a very able statement, Mr. Bloch. You have made a very great contribution, and you have been helpful to the committee.

Mr. BLOCH. Thank you.

The CHAIRMAN. We will stand in recess until 10:30 tomorrow morning.

(Whereupon, at 4:45 p.m., the committee recessed, to reconvene at 10:30 a.m., Tuesday, March 30, 1965.)

VOTING RIGHTS

TUESDAY, MARCH 30, 1965

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to recess, at 10:30 a.m., in room 2228, New Senate Office Building, Senator James O. Eastland (chairman) presiding.

Present: Senators Eastland, Ervin, Hart, Kennedy of Massachusetts, Dirksen, Fong, Tydings, Burdick, Scott, Hruska, Javits, and Miller.

Also present: Palmer Lipscomb, Robert B. Young, Thomas B. Collins, professional staff members of the committee.

The CHAIRMAN. The committee will come to order.

Judge, would you identify yourself for the record, please?

STATEMENT OF JUDGE L. H. PEREZ, REPRESENTING GOV. JOHN J. McKEITHEN, OF LOUISIANA; ACCOMPANIED BY LUKE PETROVICH, COMMISSIONER OF PUBLIC SAFETY

Mr. PEREZ. I am Leander H. Perez, Plaquemines Parish, State of Louisiana.

The CHAIRMAN. Who is the gentleman with you?

Mr. PEREZ. This is Luke Petrovich; in our local government, he is commissioner of public safety. I am commissioner of public affairs and president of the Plaquemines Council, government of our parish, county in other States.

The CHAIRMAN. Will you proceed, sir?

Mr. PEREZ. Mr. Chairman and gentlemen of the committee, on yesterday I filed a copy of my statement with the committee. I would like to appear, of course, as an opponent of Senate 1564, which is entitled "To Enforce the Fifteenth Amendment to the Constitution of the United States," called the Voting Rights Act of 1965. I am here as a representative of the Governor of Louisiana. I would like to make my presentation against this bill in three categories, I might say: first to the unquestioned, unquestionable, unconstitutional of the bill.

The CHAIRMAN. Judge, would you read your statement and then make whatever comments you desire?

Mr. PEREZ. Well, if I may, I can read a part of the statement. I do not want to be confined, however.

The CHAIRMAN. No, you are not confined to anything. I said would you read the statement and make whatever comments you desire.

Mr. PEREZ. Yes, sir.

I suggest that the unconstitutionality of the bill is very plainly shown by a reading of article 1, section 2, of the U.S. Constitution, and the 17th amendment, and then giving due consideration to the interpretation of the exclusive State right to prescribe voter qualifications. The Constitution provides that electors in each State shall have the qualifications requisite for electors in the most numerous branch of the State legislature.

Now, the States, in prescribing the qualifications of voters for the most numerous branch of their own legislatures, do not do this with reference to the election for Members of Congress, nor can they prescribe the qualifications for voters for those co nomine. But the States define who are to vote for the popular branch of their own legislatures and the Constitution of the United States, in article 1, section 2, and in the 17th amendment, says those persons who are qualified to vote for the most numerous branch of the State legislature shall vote for Members of Congress. That is a constitutional mandate.

The Constitution of the United States adopts the qualification of its own electors for Members of Congress and to vote in presidential elections. Nowhere does the Constitution give to Congress the right to fix voter qualifications.

Now, the U.S. Supreme Court has so held expressly. I hope I am not covering too much of the same ground, and if I could avoid it, I would not cover any of the same ground covered by Mr. Bloch yesterday in his citations. But some of these holdings are so clear and so specific and so unmistakable. There is the case of *Ex parte Yarbrough* in 1884, one of the original cases; the case of *Pope v. Williams*, in which the Court held the privilege to vote in a State is within the jurisdiction of the State itself to be exercised as the State may direct, and upon such terms as to it may seem proper, provided, of course, no discrimination is made between individuals, in violation of the Federal Constitution.

There is the case of *Lassiter v. Northampton County Board of Elections* in 1959, and I am sure you are familiar with that case, where Mr. Justice Douglas, speaking for a unanimous Supreme Court, held:

We come then to the question whether a State may consistently with the 14th and 17th amendments apply a literacy test to all voters irrespective of race or color.

The Court said:

No time need be spent on the question of the validity of the literacy test considered alone since as we have seen its establishment was but the exercise by the State of a lawful power vested in it not subject to our supervision, and indeed, its validity is admitted. The States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised. So while the right of suffrage is established and guaranteed by the Constitution, it is subject to the imposition of State standards which are not discriminatory and which do not contravene any restriction that Congress, acting pursuant to its constitutional powers, has imposed.

Literacy and illiteracy are neutral on race, creed, color, and sex, as reports around the world show. Literacy and intelligence are obviously not synonymous. Illiterate people may be intelligent voters. Yet in our society where newspapers, periodicals, books, and other printed matter canvass and debate campaign issues, a State might conclude that only those who are literate should exercise the franchise.

I would say while this bill, S. 1564, was being worked upon, the U.S. Supreme Court again reaffirmed the *Yarbrough* case, the

Williams case, and so forth. On March 1, 1964, the last decision was handed down by the U.S. Supreme Court, again holding to the same effect. That is the case of *Carrington v. Rash*. And Mr. Justice Stewart delivered the opinion of the Court. The Court there again held affirming *Pope v. Williams*, the *Yarbrough* case, the *Lassiter* case, the *Williams* case:

There can be no doubt either of the historic function of the States to establish on a nondiscriminatory basis and in accordance with the Constitution other qualifications for the exercise of a franchise. Indeed, the States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised.

So as late as March 1, this very month, the Supreme Court has reaffirmed the constitutional right of the States to prescribe voter qualifications to the exclusion of Congress, except that the Constitution has adopted the qualifications, fixed by the States as qualifications of voters to participate in congressional elections.

Now, then, there is presented this bill, 1564, which would change all of that, which would nullify all State laws; that is, only among certain specified States; that would take away from those States the right to fix voter qualifications; that establishes an arbitrary formula based on some 50-50 deal; that if less than 50 percent of the adult population fail to register, or if 50 percent of the adult population failed to vote in the last presidential election, then those States are to be condemned and their laws nullified and their constitutional rights violated by Congress in spite of the positive constitutional provisions in article 1, section 2 of the 17th amendment.

Why was such a formula adopted? Simply because it applied to certain States, Mississippi, Louisiana, Alabama, Georgia, South Carolina, principally, and poor little unfortunate Alaska seems to have been caught. Innocently, but still it would be deprived of its constitutional right to prescribe its voter qualifications. So the punitive bill would extend to Alaska. It would seem that in Louisiana, for instance, while we have more than 50 percent registered, the percent of those who participated in the last presidential election fell just a little below 50 percent. I think we can explain that.

The CHAIRMAN. You know what the percentage was that voted in Texas, do you not?

Mr. PEREZ. The percentage was smaller than that that voted in Louisiana, yes, sir. It was some 44 percent, I believe, as against some 47 percent for Louisiana. But I say I can explain to any reasonable, fairminded man why our percentage fell below 50 percent. Our people traditionally are Democrats. Our people were disgusted with the radical, communistic platform adopted by the Democratic Convention at Atlantic City, with the spectacle of Dave Dubinsky dictating the nomination of the Vice President. Our people are allergic to voting Republican. But nonetheless, they voted against the Democratic ticket, against the Democratic platform, because the big majority of our people are good, conservative, patriotic, constitutional Americans. We do not subscribe to the principals of the Americans for Democratic Action, the Marxist, Socialist front. That is why our people refrained from going to the polls in large numbers.

I might cite here our reaction. On a trip out to South Dakota, I stopped at the railroad station in Chicago and I met a florid-faced little

Irish lawyer-politician, who tackled me and said, "How are things going in Louisiana?" during the campaign.

I said, "About 60-40 Goldwater."

"Why," he said, "Man, you are crazy, you don't know what you are talking about."

I said, "Mister, you are talking to a man who knows what he is talking about when he is talking about Louisiana. Our vote is nearly 60-40."

He said, "You are going on a pheasant hunt. Aren't you doing well? Aren't you satisfied that the country is prosperous?"

I said, "Mister, in Louisiana, most of us do not play belly politics, we use reasoning."

I think that will illustrate why we had less than a 50-percent vote in Louisiana.

Mr. Chairman, and gentlemen of this committee, I say to the Attorney General of the United States, and I know that he testified here for several days, and I would say that I doubt it, but I would say even stronger as a fact that he could not cite one single case which would affirm his position under this bill; not one. Not one decision of the Federal courts has ever held that Congress has the constitutional right or constitutional authority to enact voter qualification legislation. I say that as a challenge, and I say that when Members of Congress who are sworn to uphold the Constitution of the United States seriously entertain a bill of this kind, that flaunts the authority of the Constitution of the United States and it requires a serious second look.

The CHAIRMAN. Let me go further: Is it not true that all the cases forbid this power to the Congress?

Mr. PEREZ. Yes, sir. As I say, it was reaffirmed by the U.S. Supreme Court as late as March the 1st, this month, this year.

Let's analyze this bill from a practical standpoint, from a political standpoint, or a legal standpoint.

In the first place, the title of the bill says, "To enforce the 15th amendment to the Constitution of the United States."

Let me read you the 15th amendment. In the light of the words of the 15th amendment, I will ask you gentlemen of the Congress, read the bill and see if it bears any similarity to the words of the 15th amendment. Here is the 15th amendment, section 1: "The right of the citizens"—and I repeat, citizens—"of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color or previous condition of servitude."

The Congress shall have power to enforce this article by appropriate legislation.

What does this bill provide? I have checked it through every section. It says this act shall be known as the Voting Rights Act of 1965.

Sec. 2. No voting qualifications or procedure shall be imposed or applied to deny or abridge the right to vote on account of race or color.

To deny whom the right to vote on account of race or color? Citizens, as the 15th amendment says? No, sir. Nowhere in this bill is the word "citizen" used. Isn't that odd? Is that accidental? I say No. This bill provides no person, no person, no person—I counted them—17 times the word "person" or "persons" is used. Not one time is the word "citizen" used in this bill. Why? This would destroy the

State laws which confine the right to vote to citizens only. That was not accidental. On the other hand, we know there is a bill that was introduced as an administration measure in this Congress which would have the effect of destroying our immigration laws and letting in hordes of unqualified people in this country. They would be taken immediately and foisted upon the States under this nefarious bill, which would give all persons the right to vote, regardless of State laws.

Please ponder that, gentlemen. It is not accidental, no.

I have read in the papers where this bill was concocted and written by a bipartisan committee. I do not see anything in this bill that was not attempted by Bobby Kennedy as Attorney General 2 and 3 years ago. As a matter of fact, we were the intended victims of this same conspiracy to destroy our State laws for voter qualification. There is a suit filed against our registrar of voters in the Parish of Plaquemines, where all these farfetched discriminatory allegations were made. But they failed to substantiate them. And Mr. Bobby Kennedy was put to the necessity of appealing the case because we beat him in his own Federal court. And after a lengthy trial—

The CHAIRMAN. Would you supply that opinion for the record?

Mr. PEREZ. Yes, sir; I want to file it in the record, sir. And I want to quote from some of the findings of the Federal Court—not a State court, not a State judge, but an appointee of the President. That suit was designed to seek an injunction, a mandatory injunction, to compel our parish registrar of voters to register all Negroes regardless of qualifications. Oh, and they complained of discrimination. They complained of coercion, of threats, of fear, and all the same bunk that is used as propaganda across the board and across the Nation through the news media.

But what did the court find? There is no waiting list. There is no coercion against any person because of race. All may apply and all are treated with courtesy. There is likewise no evidence that Negroes have been discouraged from applying for registration. There is no delay in notifying a person whether he passes and there is no separate qualifications of a person because of race. All are given the same test, eliminating no one.

The evidence shows that some white registrants now on the rolls received help in filling out their application. It is true. The registrar also helped the registration of several of the Negro applicants.

And the court concluded:

We are not justified under the evidence or the law in ordering, as requested by plaintiff, the registration of all Negro citizens of Plaquemines Parish over the age of 21;

and so on.

Quite a disappointment to the Attorney General of the United States.

But the court said, out of an abundance of caution, so there may be no discrimination in the future as there was none in the past, "We will give an injunction. We will require the Plaquemines Parish registrar of voters to file monthly reports of all applications and registrations; so that our registration since 1962 has been under the watchful eye of the Federal court.

I say that might have been a little oppressive, but we put up with it. We did not care. And we filed monthly reports and there has not been a complaint since.

The court said, there are 41 Negroes here the Attorney General is complaining of that failed to register. So, we will direct the registrar of voters to send them a notice, tell them to come back and try again. The registrar of voters sent them a notice and said, "Come back and register and try again." They cared so little about coming back to register—I do not remember how many, five, six, or seven of them, came back and the others did not even come back.

So, what are we going to do to offset this nefarious, malicious, lying propaganda? Mr. Chairman, I would like to offer as Perez Louisiana exhibit 1 this finding, this decision by the Federal court for the eastern district of Louisiana in the case of the United States of America, plaintiff, against Mary Ethel Fox, registrar of voters, Plaquemines Parish, and her deputy, civil action No. 1125.

THE CHAIRMAN. It will be admitted.

(The document referred to was marked "Perez Louisiana Exhibit No. 1" and is as follows:)

UNITED STATES OF AMERICA, PLAINTIFF v. MARY ETHEL FOX, REGISTRAR OF VOTERS, PLAQUEMINES PARISH, LOUISIANA, LIONEL L. LASSUS, DEPUTY REGISTRAR OF VOTERS, PLAQUEMINES PARISH, LOUISIANA, AND STATE OF LOUISIANA, DEFENDANTS

Civ. A. No. 11625
Division D.

United States District Court
E. D. Louisiana,
New Orleans Division.
Nov. 2, 1962.

Suit by the United States pursuant to the Civil Rights Act brought by the Attorney General against the State of Louisiana, the registrar of voters and others, wherein plaintiff sought a preliminary and permanent injunction as well as immediate registration of all Negroes who had applied for registration since January 1953 and who possessed at time of their application the qualifications of the least qualified white person who was registered. The District Court, Ainsworth J., held, inter alia, that evidence showing that some of white registrants on the rolls received help in filling out their application forms and constitutional test cards justified preliminary injunction restraining registrar and others from discriminating against any citizens of parish by reason of race or color in administration of registration procedures in the registrar's office, and that evidence did not justify a finding of a pattern or practice of discrimination.

Decree in accordance with opinion.

1. Elections § 18

The States have broad powers to determine the conditions under which the right of suffrage may be exercised, in absence of discrimination condemned by the Constitution.

2. Elections § 12

A registrar has a legal duty to conduct voter registration in a fair and reasonable manner without distinction or discrimination because of race or color and the registrar may not use procedures and practices which deny or abridge the right of any citizen to vote on account of his race or color. Civil Rights Act of 1957, § 181 et seq. as amended 42 U.S.C.A. § 1971 et seq.; U.S.C.A. Const. Amendments 14, 15.

3. Federal Civil Procedure § 1432

In action for preliminary injunction restraining discrimination against Negroes in registration of voters, discovery depositions were not inadmissible for

failure to show that witnesses resided more than 100 miles distant from court-house or because depositions were taken for discovery purposes only, since in proceeding for preliminary injunction oral testimony, although permissible, is not absolutely required, and court may receive and consider both affidavits and other documents which are the equivalent of affidavits, and depositions are at least as good as affidavits on hearing for motion for preliminary injunction. Fed. Rules Civ. Proc. rule 26(d), 28 U.S.C.A.

4. Federal Civil Procedure § 1973

In action for preliminary injunction restraining discrimination against Negroes in registration of voters, statistical summaries prepared by plaintiff's counsel representing tabulations of portions of voluminous records of registrar's office would be considered merely as argument of counsel. Civil Rights Act of 1957, § 131 et seq. as amended 42 U.S.C.A. § 1971 et seq.

5. Injunction § 127

In action to restrain the registrar of voters and others from discriminating against Negroes in registration of voters, evidence concerning practices of registrar's office prior to time when defendant took over duties of office was admissible since evidence of claimed discrimination may go back many, many years. Civil Rights Act of 1957, § 131 as amended 42 U.S.C.A. § 1971.

6. Injunction § 157

Under Civil Rights Act providing for use of injunction "or other order", court may compel the registrar of voters to register designated Negroes in action for preliminary injunction restraining discrimination in violation of Act. Civil Rights Act of 1957, § 131(c) as amended 42 U.S.C.A. § 1971(c).

See publication Words and Phrases for other judicial constructions and definitions.

7. Injunction § 157

Where all of the 87 Negro citizens who remained unregistered of 41 sought to be registered by a motion of the United States had clearly failed to comply with Louisiana law in connection with their applications and test cards, it would be an abuse of discretion to order their immediate registration, but court would order registrar forthwith to provide each of them with another opportunity to register in view of change of conditions for registration. Civil Rights Act of 1957, §§ 131 et seq., 131(c) as amended 42 U.S.C.A. §§ 1971 et seq., 1971(c); LSA-R.S. 18: 31-18: 42, 18: 231-18: 261; LSA-Const. art. 8, § 1(c, d); Acts La. Nos. 62, 63 of 1962.

8. Injunction § 147

Evidence including showing that only 51 Negroes had been denied registration over a seven-year period by registrar of voters and her predecessor, and that but 87 remained of those rejected still seeking immediate registration under orders of court, did not justify a finding of a pattern or practice of discrimination because of race or color. Civil Rights Act of 1957, § 131(e) as amended 42 U.S.C.A. § 1971(e).

9. Injunction § 147

Evidence including showing that some of white registrants on the rolls received help in filling out their application forms and constitutional test cards justified preliminary injunction restraining registrar and others from discriminating against any citizens of parish by reason of race or color in administration of registration procedures in the registrar's office. Civil Rights Act of 1957 §§ 131 et seq., 131(c) as amended 42 U.S.C.A. §§ 1971 et seq., 1971(c); LSA-R.S. 18: 31-18: 42, 18: 231-18: 261; LSA-Const. art. 8, § 1(c, d); Acts La. Nos. 62, 63 of 1962.

10. Injunction § 157

Under evidence and law, court would not be justified in ordering registration of all Negro citizens of parish over age of 21 who had necessary qualifications and none of disqualifications for a person to register, without requiring that applicants present themselves for consideration and compliance with applicable Louisiana registration laws. Civil Rights Act of 1957, §§ 131 et seq., 131(c) as amended 42 U.S.C.A. §§ 1971 et seq., 1971(c); LSA-R.S. 18: 31-18: 42, 18: 231-18: 261; LSA-Const. art. 8, § 1(c, d); Acts La. Nos. 62, 63 of 1962; U.S.C.A. Const. Amendments, 14, 15.

11. Injunction § 157

In order to insure proper compliance with order of court issuing preliminary injunction restraining discrimination against Negroes in registration of voters.

registrar and others would be directed to file monthly report with clerk of court reflecting the name, address and race of each applicant for registration, disposition of his application and, if rejected, the reason therefor. Civil Rights Act of 1957, §§ 131 et seq., 181(c) as amended 42 U.S.C.A. §§ 1971 et seq., 1971(c); LSA-R.S. 18: 81-18: 42, 18: 231-18; LSA/Const. art. 8, § 1(c, d); Acts La. Nos. 62, 36 of 1962; U.S.C.A. Const. Amends. 14, 15.

12. States ~~600~~ 191(14)

The provision of Civil Rights Act authorizing suit against state as a party defendant if there has been any deprivation of a right or privilege by any official of a state or subdivision thereof is constitutional. Civil Rights Act of 1957, § 131(c) as amended 42 U.S.C.A. § 1971(c).

Kathleen Ruddell, U.S. Atty., New Orleans, La., St. John Barrett, Richard K. Parsons, Attys., Dept. of Justice, Washington, D.C., for the United States.

Leander H. Peres, Sidney W. Provencal, Jr., New Orleans, La., for defendants Mary Ethel Fox and Lionel L. Lassus.

Jack P. F. Gremillion, Atty. Gen. of Louisiana, M. E. Culligan, Jr., John E. Jackson, Jr., Henry J. Roberts, Jr., Weldon A. Cousins, Asst. Attys. Gen. of Louisiana, for State of Louisiana.

AINSWORTH, District Judge.

This is a suit of the United States filed October 16, 1961, pursuant to the Civil Rights Acts of 1957 and 1960, 42 U.S.C.A. § 1971 et seq., brought by the Attorney General in accordance with the provisions of Section 1971(c) against the State of Louisiana (as provided in Section 601(b) of the Civil Rights Act of 1960), the Registrar of Voters, Mary Ethel Fox, and Deputy Registrar of Voters, Lionel L. Lassus, of Plaquemines Parish, Louisiana.

Plaintiff alleged that defendants, in conducting registration for voting in Plaquemines Parish, Louisiana, have engaged in racially discriminatory acts and practices against Negro citizens pursuant to a pattern and practice. It seeks a preliminary and permanent injunction against defendants, as well as immediate registration of all Negroes who have applied for registration since January 1953 and who possessed at the time of their applications the qualifications of the least qualified white person who was registered. Discovery depositions were taken by the parties on February 26, 27 and 28, March 1 and April 2, 1962, of certain white and Negro citizens of Plaquemines Parish.

Thereafter, on April 13, 1962, the United States filed a motion "for a preliminary injunction enjoining, during the pendency of this case, the defendants, their agents, employees, successors, and all persons in active concert or participation with them, from engaging in any act or practice which involves or results in distinctions based on race or color in the registration or voting processes in Plaquemines Parish, Louisiana, and specifically order said defendants:

"1. To register as a voter any Negro applicant who possesses the following qualifications and none of the following disqualifications:

"(a) That he is a citizen not less than twenty-one years of age;

"(b) That he has been a resident of Louisiana for one year; of Plaquemines Parish for six months, and of the precinct in which he offers to register as a voter for three months next preceding any election;

"(c) That he possesses the necessary qualifications regarding character and citizenship, as demonstrated by his willingness to take and sign the oath and affidavit prescribed by Louisiana law, and

"(d) If the applicant did not meet the foregoing qualifications as of January 18, 1955, that he is also able to read and write as shown by his making written application in his own hand.

"2. To point out to each Negro applicant any answers, errors or omissions on his application form, which, if uncorrected or uncompleted, will disqualify him, and to permit him to correct or complete the form.

"3. To cease requiring any Negro applicant to take or pass the so-called 'constitutional interpretation test' as a prerequisite to qualifying as a voter.

"4. To cease using the application form as an examination or test for Negro applicants, and to use such application only as an information sheet for obtaining data relating to the Negro applicant's qualifications, as such form has been and is being used in registering white applicants.

"5. To place on the current registration rolls of Plaquemines Parish and all officials copies thereof, the names of the following Negro citizens of Plaquemines Parish: (Here are listed 41 names.)

"6. To file monthly reports with the Clerk of Court reflecting the name, address, and race of each applicant for registration, the disposition of his application, and, if rejected, the reason therefor."

No finding of unconstitutionality of any Louisiana constitutional or statutory provision is sought by plaintiff.

Pretrial conference was held in chambers on April 27, 1962, and the motion for a preliminary injunction was heard by the court without a jury on May 1, 2 and 3, 1962, at which time the court received in evidence on the offer of the United States all of the voting records, application forms and test forms of the defendant Registrar, all of the discovery depositions heretofore taken by the parties, and numerous other exhibits. A number of witnesses testified orally for both sides and defendant Registrar submitted in evidence a number of exhibits.

Briefs were submitted by all parties, proposed Findings of Fact and Conclusions of Law were submitted by the United States on July 16, 1962, and reply of defendant Registrar on July 23, 1962. We permitted the filing on September 20, 1962, of additional evidence in affidavit form by defendant Registrar, relating to a new system of registration inaugurated by the Registrar on September 10, 1962. The matter is now before us for decision on the motion for a preliminary injunction.

Plaquemines Parish is one of the smallest in population in Louisiana, the 1960 census having recorded 14,239 people. It has no urban population and 82.4% are classified as rural non-farm citizens and 17.6% as rural farm citizens. The non-white population is 88.7%. The parish is one of the richest in natural resources in the State. It is geographically situated below and south of New Orleans, on both sides of the Mississippi River, extending to the Gulf of Mexico. On November 17, 1954, the governing body of Plaquemines acting under authority of the applicable Louisiana statute adopted permanent registration which meant that all persons then on the registration rolls and all those permanently registered would remain on the rolls permanently unless they were stricken therefrom as provided by law because of nonvoting in any election within a consecutive two-year period. On December 9, 1954, the first constitutional interpretation test of the Louisiana Constitution was given to an applicant as a condition of registration. On January 18, 1955, the governing body of the parish adopted a resolution requiring the Registrar strictly to enforce the standards of registration, including the giving of a constitutional interpretation test to all applicants for registration.

The present Registrar, Miss Fox, has served in that office from July 1958 to date; her Deputy Lassus has served from November 1958 to date. The Registrar's predecessor in office, Giordano, served in that office from 1945 until Miss Fox took over the duties of the office, though he was actually dismissed from the office on September 1, 1956, by the State Board of Registrars. He served, however, until his successor, the present Registrar, Miss Fox, was qualified in July 1958. The Registrar and her Deputy are the only employees of the office which is situated in the Courthouse at the parish seat at Pointe a la Hache. Several years ago in order to accommodate the public several substations at strategic places in the parish were opened at which time additional help was secured to assist in registration of large numbers of persons. This practice has been discontinued and registration occurs only in the office at the Courthouse at the parish seat.

Registration in Louisiana is a necessary prerequisite to voting in any election. The qualifications of electors and method of registration are set forth in the Louisiana Constitution and Statutes. LSA-Const. Art 8, § 1, LSA-R.S. 18:31-42. In addition to the usual qualifications, such as being of the age of majority, citizenship and residency, certain standards of good character and literacy must also be met. To establish an applicant's literacy, Louisiana Constitution Article 8, Section 1(c), requires that he shall be able to read and write in the English language or his mother tongue and shall demonstrate his ability to do so when he applies for registration by reading and writing from dictation by the Registrar any portion of the preamble of the United States Constitution; also, that he must make written application which shall contain certain essential facts to show that he is entitled to register to vote and the application shall be

entirely written, dated and signed by him "in the presence of the registration officer or his deputy, without assistance or suggestion from any person or any memorandum whatever, other than the form of application." Section 1(d) of the constitutional provision referred to requires that the person shall be of good character and reputation and shall be able to understand and give a reasonable interpretation of any section of either the Constitutions of the United States or the State of Louisiana when read to him by the Registrar. The applicant must demonstrate that he is well disposed to the good order and happiness of the State by executing an affidavit that he will faithfully and fully abide by all the laws of Louisiana.

The Louisiana Legislature at its 1962 Regular Session passed Acts 62 and 63 which installed a new system of uniform procedures for the registration of voters in all parishes of the state, said by resolution of the State Board of Registration "to insure a system of non-discriminatory registration of voters with the view of affording all qualified voters the same opportunity for successful registration." The so-called objective "Citizenship Test of Our Constitution and Government" propounds to applicants six questions each with three optional answers set forth in the test card. There are ten such cards which are displayed to applicant face down for applicant to select one for his test. Applicant must circle the applicable answer and is required to answer four questions correctly. He must also execute, as formerly, the application form, the affidavit that he will faithfully abide by Louisiana's laws, and must be able to read and write, from dictation, the preamble to the United States Constitution.

The constitutional interpretation test as a prerequisite for registration has thus been discarded.

The United States census report of 1960 showed that the population of Plaquemine Parish, of persons over 21 years of age, consisted of 8,633 white and 2,897 non-white. The registered voters of that parish as of March 12, 1962, consisted of 6,908 white and 43 Negro persons. Of this total, about half were enrolled by taking a constitutional interpretation test and the other half were registered under the old procedure whereby completion of the application form alone was sufficient. The latter were frozen in when permanent registration was adopted by the parish.

[1] The law is clear that "The States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised * * * absent of course the discrimination which the Constitution condemns." *Lasater v. Northampton County Bd. of Elections*, 360 U.S. 45, 50, 79 S.Ct. 985, 3 L.Ed.2d 1072 (1954).

In *Guinn v. United States*, 238 U.S. 347, 85 S.Ct. 926, 931, 59 L.Ed. 1340 (1915), the Supreme Court upheld the right of the states to apply a literacy test to all voters irrespective of race and color, saying, "No time need be spent on the question of the validity of the literacy test considered alone as we have seen its establishment was but the exercise by the State of a lawful power vested in it, not subject to our supervision, and, indeed, its validity is admitted."

[2] It is equally well established that a Registrar has a legal duty to conduct voter registration in a fair and reasonable manner without distinction or discrimination because of race or color and a Registrar may not use procedures and practices which deny or abridge the right of any citizen to vote on account of his race or color. Fourteenth and Fifteenth Amendments, U.S. Const.; Civil Rights Act of 1957 and 1960, 42 U.S.C.A. § 1971, et seq.; *United States v. Raines*, 362 U.S. 17, 80 S.Ct. 519, 4 L.Ed.2d 524 (1960); *United States v. Thomas*, 362 U.S. 58, 80 S.Ct. 612, 4 L.Ed.2d 535 (1960); *United States v. State of Alabama*, D.C., 192 F.Supp. 677 (1961); *State of Alabama v. United States*, 5 Cir., 1962, 804 F.2d 533. Unlike the facts in *State of Alabama*, supra, the defendants here deny that there has been discrimination because of race or color in the registration procedures of their office.

[3, 4] At the outset defendants objected to the admissibility in evidence of the discovery depositions of numerous witnesses, citizens of the parish, on the ground that it was not shown as provided by Rule 26(d) of the Federal Rules of Civil Procedure that the witnesses resided more than 100 miles distant from a courthouse; that the depositions were taken for discovery purposes only and not for use at the trial hereof. We reject this contention because in a proceeding for preliminary injunction oral testimony, although permissible, is not absolutely required. The court may receive and consider both affidavits and other documents which are the equivalent of affidavits. The depositions were taken under oath and we hold that they are at least as good as affidavits on the hearing for

a motion for preliminary injunction.¹ Objection was also made to certain statistical summaries prepared by plaintiff's counsel and submitted to the court for consideration, but these summaries were not received in evidence and are merely written statements by counsel for the plaintiff of what they contend the evidence shows. These statistics have therefore not been received as evidence by the court and will be considered merely as argument of counsel. They represent tabulations of counsel of portions of the voluminous records of the Registrar's office. There is no reason why they should not be considered, unless it is clearly indicated there is an error in the tabulation.

[5, 6] Evidence was also admitted concerning the practices of the Registrar's office prior to July 1958 when the present defendant, Miss Fox, took over the duties of the office, the Registrar objecting, however, that she is not responsible for any acts of omission or commission by her predecessor in office, Mr. Giordano, who served from 1945 until she assumed her duties. The short answer to this contention, however, is found in the Fifth Circuit's recent decision in *Kennedy v. Lynd*, 306 F. 2d 222, citing its holding in *State of Alabama v. United States*, 5 Cir., 1962, 304 F. 2d 583, in which the court held that evidence of claimed discrimination may go back many, many years. The defendant Registrar also objects to any consideration by the court that the 41 named Negro citizens in the motion of the United States for preliminary injunction should immediately be registered by a mandatory injunction. The Registrar contends that the Civil Rights Act, Section 1971(c), authorizes a proper proceeding for preventive relief only and that immediate registration of the 41 Negro citizens is unauthorized under the Act itself. This question has likewise been disposed of in *State of Alabama v. United States*, 5 Cir., 1962, 304 F. 2d 583, in which the court held that Congress expressly stated that relief available included injunctions "or other order," and that mandatory injunctions affirmatively compelling the doing of some act are a traditional tool of equity. In light of the evidence in the record the order of the District Judge in that matter that 54 Negroes be registered was held to be eminently proper. The question therefore is whether or not this record will justify an order of immediate registration of the 41 Negro citizens.

The court has carefully and painstakingly considered the evidence in connection with the application and test forms of the 41 Negro citizens to determine whether or not on their face any discrimination existed against these Negro applicants which would justify an order compelling the Registrar to place them on the rolls immediately. We found that of the 41 citizens, 4 are now registered to vote.² Of the 37 remaining applicants, 16 did not fill out the application form or attempt to answer the constitutional test.³ An examination of these cards which are in evidence discloses that virtually all of these 16 persons wrote nothing but their names at the bottom of each of the application and test card forms. For example, Angeline Jones and Earlie Pansy wrote on their test cards, "I can't answer." Roosevelt Pansy wrote, "No answer." Josephine B. Rodgers wrote, "I cannot answer these questions." Mary Theresa Taylor wrote, "I don't know." The others wrote nothing but their names. Thirteen of the Negro applicants filled out their application cards but made no attempt to answer the constitutional test.⁴ For example, Carolyn Sapp wrote on her two cards, "Can't answer" and "I cannot fill this out." Eugene Sapp wrote, "Can't answer." Alvin Jones said, "I don't know." John Taylor said, "Don't know." Thelma Taylor said, "I don't know." Vivian Taylor said, "I don't understand it." Of the remaining 8 Negro applicants, 4 failed to fill out their application forms correctly, having numerous errors and also failed the constitutional test; the other 4 satisfactorily filled out the application form but failed the constitutional test.

[7] Under the circumstances, all of the 37 Negro citizens who remain unregistered of the 41 sought to be registered by the motion of plaintiff have clearly

¹ *Group v. Finletter*, 108 F. Supp. 327 (D.C., D.C., 1952); *Hoffritz v. United States*, 240 F. 2d 109 (C.A. 9, 1956); *Western Air Lines v. Flight Engineers Internat'l Assn.*, AFL-CIO, 194 F. Supp. 908 (S.D. Cal., 1961).

² Godfrey Cosse, Jr., Norma Johnson Cosse, Isabel B. Hardy, Vincent Paul Williams.

³ Andrew Boyd Franklin, Archie George Franklin, Lavinia Franklin, Alfred Griffin, Jr., Henry Hughes, Angeline Jones, Richard N. Jones, Earlie Pansy, Roosevelt Pansy, Josephine B. Rodgers, Margarite Rodgers, Elsie Taylor, Hasepl Taylor, Leo Taylor, Mary Theresa Taylor and Victoria Tremé.

⁴ Sarah Brown, Lambert A. Duncan, Genella Johnson, Alvin Jones, Gertrude Jones, Carolyn Sapp, Eugene Sapp, Wilfred A. Smith, Elizabeth Louise Taylor, John Taylor, Thelma Taylor, Vivian Taylor and Yvonne Taylor.

failed to comply with Louisiana law in connection with their applications and test cards, and it would therefore be improper and an abuse of our discretion to order their immediate registration. However, we will order that the Registrar forthwith provide each of them with another opportunity to register since the conditions for registration have now changed.

Among other things, plaintiff has requested that the court make a finding under the provisions of 42 U.S.C.A. § 1971(e) that the alleged deprivation of voting rights was because of race or color and was or is pursuant to a pattern or practice of discrimination. It is contended by the plaintiff that white persons are assisted in the filling out of their application and test forms whereas Negro citizens are denied assistance. The defendants strenuously deny the allegation and the evidence is in sharp conflict.

The evidence shows that at least since 1954 the Registrar has had an office at the parish seat of Plaquemines Parish at Pointe a la Hache in the Courthouse on the second floor clearly marked as the Registrar of Voters' office. Office hours are from 9:00 a.m. to 5:00 p.m., Mondays, Tuesdays and Saturdays; applicants are taken into the office one at a time in the order of their arrival. There is no waiting list. Every applicant is required to complete application and constitutional test card forms. If the applicant passes the examination, he must sign the poll book and his registration certificate is mailed to him. If an applicant fails, he is so advised and may apply again on a subsequent day. There is no coercion against any person because of race, all may apply and all are treated with courtesy. There is likewise no evidence that Negroes have been discouraged from applying for registration. There is no delay in notifying the applicant whether or not he passes and there are no separate facilities for persons because of race, all applying to and being given the test in the same room, though one by one.

During the last seven years, at least since January 18, 1955, as far as we can determine, there has been a grand total of 64 Negro applications rejected. Many of these rejected applied more than one time so that the total number of Negroes involved constitutes about 51 persons. Of these, 10 are now registered. Accordingly, there has been only an average of less than 8 Negroes per year rejected for registration. During this period of time approximately 49 Negroes have been registered. It is apparent that there has been no strong movement on the part of the Negro citizenry of the parish to become registered to vote since 1955. There remains a net total of 37 of those rejected whom it is sought to be registered immediately pursuant to the motion for preliminary injunction. The greatest barrier to their registration and the obstacle which undoubtedly discouraged many of them was the requirement beginning in December 1954 of the constitutional interpretation test as a condition of registration. This test has now been discarded by the Registrar by her action on September 10, 1962, pursuant to the action of the 1962 Louisiana Legislature and the resolution of the Louisiana Board of Registration promulgating the new system for applicants throughout the State of Louisiana.^{*} This action undoubtedly removes the biggest obstacle which the Negro citizen has faced in his efforts to exercise his constitutional right as a citizen of the United States to register to vote in elections held in Plaquemines Parish.

[8] Much greater and more sufficient evidence is necessary, however, in our opinion to justify a finding of a pattern or practice of discrimination and the evidence is insufficient here to permit such a holding. Where only 51 Negroes have been denied registration over a seven-year period by the Registrar and her predecessor, and but 37 remain of those rejected still seeking immediate registration under orders of this court, it would be an unwise exercise of our authority to hold that the facts here warrant the sweeping and broad holding sought here by plaintiff.

[9] Nevertheless, there is sufficient evidence to justify our enjoining defendants by preliminary injunction from discriminating against any citizens of Plaquemines Parish by reason of race or color in the administration of the registration procedures in the Registrar's office. The evidence abundantly shows that some of the white registrants now on the rolls received help in the filling out of their application forms and constitutional test cards. It is true that either the Registrar or her Deputy also helped in the registration of some of the Negro applicants, namely, Junius Tate, Reverend Henry Hardy, Norma Cosse, Mary

^{*} See Registrar's affidavit to this effect with accompanying exhibits, filed in this court on September 20, 1962.

Alice Harvey and August Tinson, all of whom are now registered to vote. The similarity of answers on the constitutional test form cards, especially those shown in the display furnished the court by plaintiff's counsel for the period October 4-7, 1960, shows conclusively that all of the 55 applicants in the display were either assisted in taking the test or provided with the written answers for them to copy. It is equally true that several other white witnesses were assisted in their registration.⁷ Defendant Registrar contradicts this evidence with white witnesses who testified that they were registered without assistance by the Registrar or her Deputy. Though the evidence is in conflict, we have no doubt that a number of white registrants were aided in completing the application forms and taking the constitutional test. Under the prior regime of Giordano, as Registrar, and particularly prior to 1954, the then Registrar maintained no regular office or hours for registration of applicants. The handwriting expert of plaintiff identified a number of application forms of registrants filled out during that period which were in the handwriting of one person indicating that even the application forms in the times eight or more years ago were in some instances filled out by someone other than the applicant. But the Giordano excesses have long since ceased to exist and have not existed under the defendant Registrar, Miss Fox. She has always maintained an office with regular office hours. With the exception of the irregularities under Deputy Registrar Hingle who was employed only two months and who undoubtedly helped to fill out application forms for white registrants, the forms are now and have been for many years filled out by the applicants, themselves, both white and Negro.

The Registrar, Miss Fox, in her written briefs and response to plaintiff's proposed decree, states that the new objective citizenship test which now has supplanted the difficult constitutional interpretation test "will be administered without discrimination" and that she "will perform the duties imposed upon her in a conscientious and nondiscriminatory manner." She maintains that her office procedures have been improved and states that "changes have been made" and that "defendants in instant case have evidenced a willingness and desire to do the right thing at all times in accordance with Louisiana law"; that "considerable changes have been made to insure fair treatment of all"; "there has been tremendous improvement and undoubtedly there will be further improvement to insure that all are treated equally and fairly, improvements to guarantee that none can ever complain."

The evidence of the witness Lambert now indicates that at least since 1961 constitutional test forms were evenly distributed where in the past white applicants were apparently given the easier forms to answer, particularly Forms 2 and 8. Of course, the constitutional interpretation test in Plaquemines Parish is now moot, and future applicants will no longer have to contend with it.

[10] Pending this suit we find it necessary to grant the motion for a preliminary injunction to insure that defendants will not engage in any act or practice which involves or results in distinctions based on race or color in the registration or voting processes in Plaquemines Parish, Louisiana. However, we are not justified under the evidence or the law in ordering, as requested by plaintiff, the registration of all Negro citizens of Plaquemines Parish over the age of 21 who have the necessary qualifications and none of the disqualifications for a person to register, without requiring that applicants present themselves for consideration and compliance with the applicable Louisiana registration laws. This means that the application form must be correctly filled out without assistance. It is not an information form only—it is a literacy test—and it is simple enough for even the unsophisticated citizen to complete if he can read and write. Likewise, the citizenship test now required by the new Louisiana statute is a much more reasonable test than the former constitutional interpretation test which the Negro citizens failed. The biggest barrier to successful registration by Negro applicants, the constitutional interpretation test, has now been removed and under the preliminary injunction which we are issuing the defendants are enjoined against discrimination because of race or color in the registration processes in Plaquemines Parish. All of the remaining 37 named Negro citizens heretofore rejected shall be notified by the Registrar within fifteen days of this decree that they may again present themselves

⁷ See testimony of Robert Norred, Amanda Mackey, Anthony P. Arnone, Charles Albert Gieseler, Herbert J. Crochet, Annie E. Buras, Catherine Ruth Buras, Henry C. Wall, James Albert Bauman and Lillie Mae Bauman.

for registration in accordance with this mandate. This is therefore substantial relief to plaintiff and should be sufficient under the circumstances to guarantee to all persons in Plaquemines Parish, regardless of race or color, a full opportunity to register and vote without discrimination. Our action here is carefully designed to provide to Negro citizens of Plaquemines the greatest protection and safeguard of their right to register and vote, while maintaining as far as is consistent with the requirements of the Fifteenth and Fourteenth Amendments, the delicate balance between state and federal relations. Registration is a state function; it can best be carried out by the proper state official. A decent respect for the rights of all citizens, white and Negro, is necessary, however. It must be maintained. Our injunction will insure it. The Registrar's protestations that she is now acting in good faith and will continue to do so under the new registration procedures will be tested. There is a ray of hope that conditions will improve. If good faith registration is now provided, the remedy we have granted can subsequently be removed.

[11] In order to insure proper compliance with our order the defendants are directed to file monthly reports with the Clerk of this court reflecting the name, address and race of each applicant for registration, the disposition of his application and, if rejected, the reason therefor.

After a satisfactory trial period, if defendants feel that this requirement is burdensome and the injunction is then unnecessary, they may make a proper showing to the court on the hearing of the merits of this suit that the conduct of their office since the handing down of this injunction has been without discrimination to applicants because of race or color, and the court will then determine the matter on the basis of the evidence.

[12] The State of Louisiana, defendant herein, attacks the constitutionality of Section 601(b) of the Civil Rights Act of 1960 (now contained in the last sentence of 42 U.S.C.A. § 1971(c)) which authorizes suit against the state as a party defendant if there has been any deprivation of a right or privilege under this section by any official of a state or subdivision thereof. The United States Supreme Court in *United States v. Raines*, 382 U.S. 17, 80 S.Ct. 519, 4 L.Ed. 2d 824 (1960), held that the Act was not unconstitutional. The Court also said in said case (p. 25, 80 S.Ct. p. 525), " * * * it is enough to say that the conduct charged—discrimination by state officials, within the course of their official duties, against the voting rights of United States citizens, on grounds of race or color—is certainly, as 'state action' and the clearest form of it, subject to the ban of that Amendment [Fifteenth], and that legislation designed to deal with such discrimination is 'appropriate legislation' under it. It makes no difference that the discrimination in question, if state action, is also violative of state law." The Court further said, "We think this Court has already made it clear that it follows from this that Congress has the power to provide for the correction of the constitutional violations of every such official without regard to the presence of other authority in the State that might possibly revise their actions." On another issue the constitutionality of this section having been assailed by the State of Louisiana was declared constitutional in *United States v. Manning*, W.D. La., 1962, 206 F. Supp. 623. See also *State of Alabama v. United States*, supra. The plea of unconstitutionality is therefore rejected.

DECREE

Pursuant to the Findings of Fact and Conclusions of Law contained in the opinion of the court entered this day.

IT IS THE ORDER, JUDGMENT AND DECREE OF THIS COURT that the State of Louisiana, Mary Ethel Fox, Registrar of Voter of Plaquemines Parish, Louisiana, and Louis L. Lassus, Deputy Registrar of Voters, their deputies, agents, officers, employees, successors, and all persons in active concert or participation with them, be and each is hereby enjoined by preliminary injunction, from and after this decree, during the pendency of this case, from:

1. Engaging in any act or practice which involves or results in distinctions based on race or color in the registration or voting processes in Plaquemines Parish, Louisiana.

2. Assisting applicants in completing the filling out of their application and/or test forms without giving the said aid and assistance to Negro applicants.

3. Grading or rating the application and test cards of Negro applicants in any way different from that of other applicants who may apply for registration, having due regard for the requirements of Louisiana constitutional and statutory provisions relating to voters registration.

4. Failing to apply equal standards to all applicants, including Negro applicants, in processing and judging who has passed or failed to pass the tests leading to registration.

5. Administering the qualification tests to Negroes in Plaquemines Parish, Louisiana, in any way different from the manner in which those tests are administered to other applicants for registration.

6. Denying to any Negro citizen of Plaquemines Parish, Louisiana, for reasons of race or color, any of his rights under the laws of the State of Louisiana or the United States pertaining to his right to register to vote in said parish.

7. Failing to accord any Negro citizen of Plaquemines Parish, Louisiana, in a fair, impartial and nondiscriminatory manner, each and every right such citizen has or may have under the registration laws of the State of Louisiana and the lawful resolutions and regulations of the Louisiana Board of Registration.

IT IS FURTHER ORDERED that each of the named Negro citizens in plaintiff's motion for preliminary injunction not now registered to vote, be notified by the Registrar of Voters not later than fifteen days from date of service of this decree on defendants, that they may present themselves as applicants for registration for processing and judging of their tests in conformity with this decree.

IT IS FURTHER ORDERED that defendants file monthly reports with the Clerk of this court reflecting the name, address, and race of each applicant for registration, the disposition of his application and, if rejected, the reason therefor.

IT IS THE FURTHER ORDER, JUDGMENT AND DECREE OF THIS COURT that the defendants shall until further order of this court make the voter registration books and records of Plaquemines Parish, Louisiana, available for inspection and copying by the plaintiff at any and all reasonable times at the office of the Registrar of Voters of Plaquemines Parish.

This court retains jurisdiction of this cause for the purpose of issuing any and all additional orders herein that may, in its judgment, become necessary or appropriate for the purpose of modifying and/or enforcing this decree.

IT IS ORDERED that the costs incurred in this proceeding be and they are hereby taxed against the defendants, for which execution may issue.

Mr. PEREZ. The case was appealed to the U.S. Fifth Circuit.

The CHAIRMAN. Judge, do you not think that these allegations of intimidation in the South are largely a myth?

Mr. PEREZ. I said it was nefarious, willful, malicious, lying propaganda. That is what I said and that is a correct label for it.

I remember in that case when the Attorney General filed a brief, he made several misstatements, false statements of fact, which were not justified by the evidence in the record. And we employed an expert—I believe he was called a demographer—it is the first time I have ever heard of one. He analyzed the testimony and he labeled the statement of fact made by the Attorney General in his brief as being false and dishonest in his attempt to try to show discrimination against our registrar of voters.

If I may, Mr. Chairman, let's go on with an analysis of the bill. I pointed out first that this bill is not a bill to carry out the provision of the 15th amendment, which protects the right of citizens only to vote under State laws. But this bill in 17 different instances refers only to persons and would have the effect, if Congress passed this Thaddeus Stevens bill, of opening the doors to the registration of noncitizens and all immigrants coming into the country who are not qualified. I charge that that is one of the hidden purposes of this bill, along with the immigration bill that is pending; a part of a conspiracy.

Now, let us see as to the qualification testimony. In section 3, it provides that no person shall be denied the right to vote in any Federal, State, or local election. I am sure you gentlemen realize Congress does not have any authority to prescribe for State or local elec-

tions. I am sure it is still fresh in our minds that when Congress wanted to outlaw poll taxes, it took a constitutional amendment and that constitutional amendment simply outlaws poll taxes in congressional and presidential elections. Now, how can Congress, under the whiplash, assume to legislate voter qualifications in State and local elections? We have ward elections in hundreds of wards in Louisiana for parish jurors, members of governing bodies. Congress would put the might of the United States to meddle in our ward elections. I say it is nothing short of a disgrace. But no person, section 3 provides, shall be denied the right to vote in any Federal, State or local election because of his failure to comply with any test or device—any test or device—as a qualification for voting.

Now, let us see what that means. Then here is a definition of test and device. The phrase "test and device" shall mean any requirement that a person—not a citizen—as a prerequisite for voting or registration for voting, demonstrate the ability to read, write, interpret, or understand any matter. So any test or device under the State law is simply wiped out. But under this proposed law, any person would have—the States, subdivisions of the State would be prohibited from using any test or device which would require a person to understand any matter. Congress would impose upon us morons who do not understand any matter.

But do you know what the hidden purpose back of that provision is? We have voting machines and under this bill, our voting machine law would be nullified. And those who are placed on the list, the morons, would not have to use our voting machines.

Is that a surprise? I will prove it to you by another provision of this bill. If you look at page 8, on the bottom of page 8(b):

Whoever, within a year following an election in a political subdivision in which an examiner has been appointed (1) destroys, defaces, mutilates, or otherwise alters the marking of a paper ballot cast in such election, or (2) alters any record of voting in such election made by a voting machine or otherwise, shall be fined not more than \$5,000, or imprisoned not more than five years, or both.

For what? A paper ballot. Now, I can tell you gentlemen of the committee that we got information out of the post office in New Orleans before this bipartisan committee was supposed to have worked on this bill that postmasters would be appointed as Federal registrars and not only would they register voters, but that the voting would take place in the post offices. That is where your paper ballots come in. That is where this provision comes in about prohibiting any test or device which would require anyone to be able to read or understand anything. This would open the gates to the greatest fraud and corruption in elections, worse even than during the first Reconstruction, because this is the beginning of the second reconstruction in the South.

Just imagine, not even voting machines, gentlemen; no test or device that would require anyone to understand or interpret any matter. That is outlawed. We would raise the standard of our Government; we are going to have universal manhood suffrage. Back to the days of Thaddeus Stevens and military rule in the South.

Mr. Chairman, if I may suggest an amendment, why, the salaries, coming out of the same source of information, the salaries to be paid to these postmasters, several thousand dollars a year—why not save

that money? Why not put soldiers in charge? We have hundreds of thousands of them. We pay them only \$50 a month. Why not put the coercive power in the Federal Government directly on the necks of our people, in the first instance instead of later on.

Now, let us look at page 4 of this bill. Part of the mechanics to carry it out: "The Civil Service Commission shall appoint as many examiners"—now, the word "examiners," of course, is a misnomer. It is Federal registrars of voters—"shall appoint as many examiners in such subdivision"—of the State—"as it may deem appropriate to prepare and maintain lists of persons eligible * * *." Under this bill, the lists will be made up of all those, all Negroes who are 21 years of age or more. But I understand his excellency, the President, says it ought to be 18.

I will make a comparison with that later on, showing where that comes from.

I notice, too, that such appointments shall be made without regard to civil service laws. So our information is correct that postmasters will be appointed as Federal registrars of voters and the civil service laws, the Hatch Act, will not apply.

Now, then, too, there is a provision here that whenever the Attorney General certifies that he has received complaints from 20 or more voters, he may proceed to make determinations that the appointment of examiners is necessary, then the Civil Service Commission shall appoint as many examiners in such subdivisions as they may deem necessary, and a determination or certification by the Attorney General shall be final. There is no recourse from that.

Senator ERVIN. Judge, have you ever seen a more drastic proposal to vest more arbitrary power in public officials than that one?

Mr. PEREZ. I said it was worse than the Thaddeus Stevens legislation during Reconstruction, sir, and it is. It is the most nefarious—it is inconceivable that Americans would do that to Americans.

Senator ERVIN. There are alternative provisions for the Attorney General to go into action. One is that if 20 people sign a complaint. They do not have to swear to it or prove anything. If 20 people in a State with 2 or 3 million population sign a paper making an unproved charge, and the charge is not required to be proved, then the Attorney General has the arbitrary and tyrannical power to appoint these misnamed Federal registrars to take charge of the election in the affairs of their State?

Mr. PEREZ. That is correct, sir, and there is another provision similar to that, even worse, if possible, that after an election, if one person complains that somebody attempted to interfere with his right to vote, or if his vote was not counted, then the Federal attorney can bring the suit and stop the promulgation of the returns of that election.

Senator ERVIN. And they can do that even in the case of candidates who would be elected even if they counted the votes of every person who complained as adverse to the winning candidate.

Mr. PEREZ. Why, of course, it can be as false as anything. We have had experience with that, sir, because when the—I believe it is called the Civil Rights Commission—came into New Orleans, there was a Negro who appeared and testified under oath against Plaquemines Parish. The same Negro appeared in this suit. And on cross-

examination, he admitted that he had testified to a lie before the Civil Service Commission. We took it up with the Attorney General and said, "You ought to prosecute this man for having falsely sworn." You know how much reaction we got from that, do you not? None. Now, that is the type of complaint that would be made.

But, sir, if you will let me state to you the reason why that is put in here, I say it was put in here at the request of the so-called Freedom Party in Mississippi so that after the election of a Congressman in these Southern States, any, any person could complain that his vote was not counted in a congressional district. The matter would wind up in the Federal courts. The certification of the party elected would be held up until the case is processed through the courts, and the Congressman would not be able to take his seat and would not be able to be certified as elected. That is the filthy nefarious scheme back of this provision.

Senator ERVIN. The judge—

Mr. PEREZ. I challenge anybody to deny, after a complete study of it and real thinking, the motive back of this bill.

Senator ERVIN. I will ask you whether this bill would apply to 34 North Carolina counties?

Mr. PEREZ. Yes, sir.

Senator ERVIN. And under the language of that section if 10 men in 1 county claimed they had been wrongfully denied the right to vote, the court would have to hold up the certification of every candidate winning in that election, including the Governor of North Carolina, even though he had the majority without that 10 votes of 170 or 180,000 votes. Is that not true?

Mr. PEREZ. That is correct, sir.

Senator ERVIN. In other words, it would depend upon certifying the results of an election in any case?

Mr. PEREZ. Let me point out another provision of this bill about the listing—not registration, but simply the listing of adults who would be given the right to vote, and if they complain that their right to vote was interfered with or attempted to be interfered with, then the election process would be held up until the Federal courts finally decide upon the matter. This bill purports to give the right of challenge in section 6:

Any challenge to a listing on an eligibility list shall be heard and determined by a hearing officer appointed by and responsible to the Civil Service Commission and under such rules as the Commission shall by regulation prescribe. Such challenge shall be entertained only if made within 10 days after the challenged person is listed * * *.

Now, here is the joker—that is on page 7. You have to read its context. Refer back to page 5 and here is a provision in the third sentence of subsection (b) on page 5:

The list shall be available for public inspection and the examiner shall certify and transmit such list, and any supplements as appropriate, at the end of each month * * *.

And still a person is given the right to challenge if his challenge is made within 10 days of the listing, but the listing is not made public until the end of the month. What kind of proposed legislation is that? Is that a mockery and a fraud?

Here is another provision that would be almost comical if it were not serious. Section 10 provides for the fait accompli:

Listing procedures shall be terminated in any political subdivision of any State whenever the Attorney General notifies the Civil Service Commission (1) that all persons listed by the examiner for such subdivision have been placed on the appropriate voting registration roll—

and there is no provision that any person shall be placed on any roll, but only posted on a list and voting in the post offices we are told—

and (2) that there is no longer reasonable cause to believe that persons will be deprived of or denied the right to vote on account of race or color in such subdivision.

I say that provides for the fait accompli when the local governments will be turned over to first-class citizens only under the heel of the coercive power of the Federal Government and our people held under the heel of the incompetents who will own the Government. You know what I mean?

You know, there was another period in our history when a similar situation developed after the first Reconstruction and that was graphically portrayed in a book called "Whither Solid South?" by an eminent lawyer and historian, Charles Wallace Collins. He recorded some of the monstrosities that happened during the first Reconstruction. He said—

The years of Reconstruction, ranging up through 12 years for some States, was an attempt to destroy white civilization in the South by crude and brutal methods. The former Negro slaves were put into power over their old masters. The Negro knew nothing of the affairs of Government—

if anything, they know nothing these days of the affairs of government—

but there were two classes of whites to assist him. The northern predator—the carpetbagger—stalked the stricken South like a jackal to fitch for himself something from the wreckage. His partner was the renegade and apostate Southerner—the scalawag—without honor, pride or patriotism, a political bastard, who deserted his own people in their hour of peril to become a scavenger, hovering like a vulture above the ruins of Negro rule.

That is what this bill holds out for the South in the second Reconstruction.

Now, then, where do we find—let's go back further. We are talking about universal suffrage, manhood suffrage, again. I would like to read to you from "The Government of the United States," a book by William Bennett Monroe, published in 1946. He said:

It used to be taken for granted that universal suffrage, if established and maintained, would guarantee a democratic system of government. But we have learned somewhat late in the history of political science that dictatorships are the ones that have the widest suffrage. The qualifications for voting in Russia as set forth in the constitution of that country are the most liberal in any country in the world. All this means is that true democracy requires something more than letting everybody vote.

You know, this question was debated seriously at the Constitutional Convention in 1787 when it was discussed who should vote in con-

gressional elections. Some wanted the privilege to be confined to owners of land, others want it extended to all taxpayers. Hardly anyone among the framers of the Constitution favored manhood suffrage, so-called. Then someone raised the question, "Why not let each State settle the matter of itself. Let those who are given the right to vote in each State automatically become voters in congressional elections." This seemed to be the easiest solution and it was adopted without a dissenting voice. That was the origin of that provision of the Constitution, article 1, section 2.

Now, let us see what the counterpart of the proposal in this bill provides. I have here a copy of the Russian Constitution and it provides, article 25, that all citizens of the U.S.S.R. who have reached the age of 18—why not amend this bill and make it 18? We do not need the constitutional authority, do we? Of course not. After all, if we have the coercive power, thousands of Marxists, Secret Service, the Army, why not? We have the power. Let's make it 18. Let's imitate Russia.

All citizens of the U.S.S.R. who have reached the age of 18, irrespective of race or nationality, sex, religion, education, domicile, social origin, proper status or past activities, have the right to vote in the election of deputies with the exception of insane persons.

I do not know. I have looked through this bill. If insane persons are accepted in here, I do not know it. I have not found it. I know that it says no person should be put to any test or device that will show that he understands anything about anything. Russia says an insane person cannot vote. "And persons who have been convicted by a court of law whose sentence includes deprivation of electoral rights." That would be conviction of felony under our law. I do not know if it is provided for in 1864. If it is, I have overlooked it. As I see it under this bill, and if I am mistaken, for the record at this time, I would like to be corrected. For the record, please, if anyone knows of any provision in this bill that would exclude felons from being listed by the Federal examiner, I would like to hear about it. I have searched all through the bill, worn my eyes out looking for it. I know that it takes out the moral qualifications. I do not know why, except from what we hear about Washington, with all the queers and everything in Government positions, thousand and thousands of them, surely we would not want to close the door to them. The perverts, the immoral people, the aliens—persons. After all, they are persons. And we should be dedicated to upholding the dignity of man. Human rights.

Now, I have read to you from the Constitution of Russia and I would like to file as exhibit 2, Perez, Louisiana, Mr. Chairman, please, a copy of this Constitution.

The CHAIRMAN. It will be admitted.

(The document referred to was marked "Perez Louisiana Exhibit No. 2" and is as follows:)

EXHIBIT 2, PEREZ, LOUISIANA

Workers of All Countries, Unite!

CONSTITUTION
(FUNDAMENTAL LAW)
of the
UNION OF SOVIET
SOCIALIST REPUBLICS

*As amended by the Supreme Soviet of the
U.S.S.R. on February 25, 1947, on the recom-
mendations of the Drafting Commission*

*Published by "SOVIET NEWS"
London, 1947*

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CHAPTER I

The Social Structure

ARTICLE 1.—The Union of Soviet Socialist Republics is a socialist state of workers and peasants.

ARTICLE 2.—The political foundation of the U.S.S.R. is the Soviets of Working People's Deputies, which grew and became strong as a result of the overthrow of the power of the landlords and capitalists, and the conquest of the dictatorship of the proletariat.

ARTICLE 3.—All power in the U.S.S.R. belongs to the working people of town and country as represented by the Soviets of Working People's Deputies.

ARTICLE 4.—The economic foundation of the U.S.S.R. is the socialist system of economy and the socialist ownership of the instruments and means of production, firmly established as a result of the liquidation of the capitalist system of economy, the abolition of private ownership of the instruments and means of production, and the elimination of the exploitation of man by man.

ARTICLE 5.—Socialist property in the U.S.S.R. exists either in the form of state property (belonging to the whole people) or in the form of co-operative and collective-farm property (property of collective farms, property of co-operative societies).

ARTICLE 6.—The land, its mineral wealth, waters, forests, mills, factories, mines, rail, water and air transport, banks, communications, large state-organised agricultural enterprises (state farms, machine and tractor stations and the like) as well as municipal enterprises and the bulk of dwelling houses in the cities and industrial localities, are state property, that is, belong to the whole people.

ARTICLE 7.—The common enterprises of collective farms and co-operative organisations, with their livestock and implements, the products of the collective farms and co-operative organisations, as well as their common buildings, constitute the common, socialist property of the collective farms and co-operative organisations.

Every household in a collective farm, in addition to its basic income from the common collective-farm enterprise, has for its personal use a small plot of household land and, as its personal property, a subsidiary husbandry on the plot.

a dwelling house, livestock, poultry and minor agricultural implements in accordance with the rules of the agricultural artel.

ARTICLE 8.—The land occupied by collective farms is secured to them for their use free of charge and for an unlimited time, that is, in perpetuity.

ARTICLE 9.—Alongside the socialist system of economy, which is the predominant form of economy in the U.S.S.R., the law permits the small private economy of individual peasants and handicraftsmen based on their own labour and precluding the exploitation of the labour of others.

ARTICLE 10.—The personal property right of citizens in their incomes and savings from work, in their dwelling houses and subsidiary home enterprises, in articles of domestic economy and use and articles of personal use and convenience, as well as the right of citizens to inherit personal property, is protected by law.

ARTICLE 11.—The economic life of the U.S.S.R. is determined and directed by the state national-economic plan, with the aim of increasing the public wealth, of steadily raising the material and cultural standards of the working people, of consolidating the independence of the U.S.S.R. and strengthening its defensive capacity.

ARTICLE 12.—Work in the U.S.S.R. is a duty and a matter of honour for every able-bodied citizen, in accordance with the principle: "He who does not work, neither shall he eat."

The principle applied in the U.S.S.R. is that of socialism: "From each according to his ability, to each according to his work."

CHAPTER II

The State Structure

ARTICLE 13.—The Union of Soviet Socialist Republics is a federal state, formed on the basis of a voluntary Union of equal Soviet Socialist Republics, namely:

The Russian Soviet Federative Socialist Republic.

The Ukrainian Soviet Socialist Republic.

The Byelorussian Soviet Socialist Republic.

The Uzbek Soviet Socialist Republic.

The Kazakh Soviet Socialist Republic.

The Georgian Soviet Socialist Republic.

The Azerbaijan Soviet Socialist Republic.

The Lithuanian Soviet Socialist Republic.

The Moldavian Soviet Socialist Republic.

The Latvian Soviet Socialist Republic.

The Kirghiz Soviet Socialist Republic.

The Tajik Soviet Socialist Republic.

The Armenian Soviet Socialist Republic.

The Turkmen Soviet Socialist Republic.

The Estonian Soviet Socialist Republic.

The Karelo-Finnish Soviet Socialist Republic.

ARTICLE 14.—The jurisdiction of the Union of Soviet Socialist Republics, as represented by its higher organs of state power and organs of state administration, embraces:

(a) Representation of the U.S.S.R. in, international relations, conclusion, ratification and denunciation of treaties of the U.S.S.R. with other states, establishment of general procedure governing the relations of Union Republics with foreign states;

(b) Questions of war and peace;

(c) Admission of new republics into the U.S.S.R.;

(d) Control over the observance of the Constitution of the U.S.S.R., and ensuring conformity of the Constitutions of the Union Republics with the Constitution of the U.S.S.R.;

(e) Confirmation of alterations of boundaries between Union Republics.

(ii) Constitution of the formation of new Territories and Regions and also of new Autonomous Republics or Autonomous Regions within Union Republics;

(iii) Organisation of the defence of the U.S.S.R., direction of all the Armed Forces of the U.S.S.R., determination of directing principles governing the organisation of the military formations of the Union Republics;

(iv) Foreign trade on the basis of state monopoly;

(v) Safeguarding the security of the state;

(vi) Determination of the national-economic plans of the U.S.S.R.;

(vii) Approval of the consolidated state budget of the U.S.S.R., and of the report on its fulfilment; determination of the taxes and revenues which go to the Union, the Republican and the local budgets;

(viii) Administration of the banks, industrial and agricultural institutions and enterprises and trading enterprises of all-Union importance;

(ix) Administration of transport and communications;

(x) Direction of the monetary and credit system;

(xi) Organisation of state insurance;

(xii) Contracting and granting of loans;

(xiii) Determination of the basic principles of land tenure and of the use of mineral wealth, forests and waters;

(xiv) Determination of the basic principles in the spheres of education and public health;

(xv) Organisation of a uniform system of national-economic statistics;

(xvi) Determination of the principles of labour legislation;

(xvii) Legislation concerning the judicial system and judicial procedure; criminal and civil codes;

(xviii) Legislation concerning Union citizenship, legislation concerning rights of foreigners;

(xix) Determination of the principles of legislation concerning marriage and the family;

(xx) Issuing of all-Union acts of amnesty.

ARTICLE 15. The sovereignty of the Union Republics is limited only in the spheres defined in Article 14 of the Constitution of the U.S.S.R. Outside these spheres each Union Republic exercises state authority independently. The U.S.S.R. protects the sovereign rights of the Union Republics.

ARTICLE 16. Each Union Republic has its own Constitution, which takes account of the specific features of the Republic and is drawn up in full conformity with the Constitution of the U.S.S.R.

ARTICLE 17.—The right freely to secede from the U.S.S.R. is reserved to every Union Republic.

ARTICLE 18.—The territory of a Union Republic may not be altered without its consent.

ARTICLE 18a.—Each Union Republic has the right to enter into direct relations with foreign states and to conclude agreements and exchange diplomatic and consular representatives with them.

ARTICLE 18b.—Each Union Republic has its own Republican military formations.

ARTICLE 19.—The laws of the U.S.S.R. have the same force within the territory of every Union Republic

ARTICLE 20.—In the event of divergence between a law of a Union Republic and a law of the Union, the Union law prevails

ARTICLE 21.—Uniform Union citizenship is established for citizens of the U.S.S.R.

Every citizen of a Union Republic is a citizen of the U.S.S.R.

ARTICLE 22. The Russian Soviet Federative Socialist Republic consists of the Altai, Krasnodar, Krasnoyarsk, Primorye, Stavropol and Khabarovsk Territories; the Archangel, Astrakhan, Bryansk, Velikiye-Luki, Vladimir, Vologda, Voronezh, Gorky, Grozny, Ivanovo, Irkutsk, Kaliningrad, Kalinin, Kaluga, Kemerovo, Kirov, Kostroma, Crimea, Kuibyshev, Kurgan, Kursk, Leningrad, Molotov, Moscow, Murmansk, Novgorod, Novosibirsk, Omsk, Orel, Penza, Pskov, Rostov, Ryazan, Saratov, Sakhalin, Sverdlovsk, Smolensk, Stalingrad, Tambov, Tomsk, Tula, Tyumen, Ulyanovsk, Chelyabinsk, Chita, Chkalov and Yaroslavl Regions; the Tatar, Bashkir, Daghestan, Buryat-Mongolian, Kabardinian, Kom. Mari, Mordovian, North Ossetian, Udmurt, Chuvash and Yakut Autonomous Soviet Socialist Republics; and the Adygei, Jewish, Oirot, Tuva, Khakass and Cherkess Autonomous Regions.

ARTICLE 23.—The Ukrainian Soviet Socialist Republic consists of the Vinnitsa, Volhynia, Voroshilovgrad, Dnepropetrovsk, Drohobych, Zhitomir, Transcarpathian, Zaporozhye, Izmail, Kamenets-Podolsk, Kiev, Kirovograd, Lvov, Nikolayev, Odessa.

Poltava, Rovno, Stalino, Stanislaw, Sumy, Tarnopol, Kharkov, Kherson, Chernigov and Chernovitsi Regions.

ARTICLE 24.—The Azerbaijan Soviet Socialist Republic includes the Nakhichevan Autonomous Soviet Socialist Republic and the Nagorno-Karabakh Autonomous Region.

ARTICLE 25.—The Georgian Soviet Socialist Republic includes the Abkhazian Autonomous Soviet Socialist Republic, the Adjara Autonomous Soviet Socialist Republic and the South Ossetian Autonomous Region.

ARTICLE 26.—The Uzbek Soviet Socialist Republic consists of the Andizhan, Bukhara, Kashka-Darya, Namangan, Samarkand, Surkhan-Darya, Tashkent, Ferghana and Khorezm Regions and the Kara-Kalpak Autonomous Soviet Socialist Republic.

ARTICLE 27.—The Tajik Soviet Socialist Republic consists of the Garm, Kulyab, Leninabad and Stalinabad Regions and the Gorno-Badakhshan Autonomous Region.

ARTICLE 28.—The Kazakh Soviet Socialist Republic consists of the Akmolinsk, Aktyubinsk, Alma-Ata, East Kazakhstan, Guryev, Jambul, West Kazakhstan, Karaganda, Kzyl-Orda, Kokchetav, Kustanai, Pavlodar, North Kazakhstan, Semipalatinsk, Taldy-Kurgan and South Kazakhstan Regions.

ARTICLE 29.—The Byelorussian Soviet Socialist Republic consists of the Baranovich, Bobruisk, Brest, Vitebsk, Gomel, Grodno, Minsk, Moghilev, Molodechno, Pinsk, Polesseye and Polotsk Regions.

ARTICLE 29a.—The Turkmen Soviet Socialist Republic consists of the Ashkhabad, Mary, Tashauz and Chardzhou Regions.

ARTICLE 29b.—The Kirghiz Soviet Socialist Republic consists of the Dzhatal-Abad, Issyk-Kul, Osh, Talas, Tien-Shan and Frunze Regions.

CHAPTER III

The Higher Organs of State Power in the Union of Soviet Socialist Republics

ARTICLE 30.—The highest organ of state power in the U.S.S.R. is the Supreme Soviet of the U.S.S.R.

ARTICLE 31.—The Supreme Soviet of the U.S.S.R. exercises all rights vested in the Union of Soviet Socialist Republics in accordance with Article 14 of the Constitution, in so far as they do not, by virtue of the Constitution, come within the jurisdiction of organs of the U.S.S.R. that are accountable to the Supreme Soviet of the U.S.S.R., that is, the Presidium of the Supreme Soviet of the U.S.S.R., the Council of Ministers of the U.S.S.R., and the Ministries of the U.S.S.R.

ARTICLE 32.—The legislative power of the U.S.S.R. is exercised exclusively by the Supreme Soviet of the U.S.S.R.

ARTICLE 33.—The Supreme Soviet of the U.S.S.R. consists of two Chambers: the Soviet of the Union and the Soviet of Nationalities.

ARTICLE 34.—The Soviet of the Union is elected by the citizens of the U.S.S.R. voting by election districts on the basis of one deputy for every 300,000 of the population.

ARTICLE 35.—The Soviet of Nationalities is elected by the citizens of the U.S.S.R. voting by Union Republics, Autonomous Republics, Autonomous Regions and National Areas on the basis of twenty-five deputies from each Union Republic, eleven deputies from each Autonomous Republic, five deputies from each Autonomous Region and one deputy from each National Area.

ARTICLE 36.—The Supreme Soviet of the U.S.S.R. is elected for a term of four years.

ARTICLE 37.—The two Chambers of the Supreme Soviet of the U.S.S.R., the Soviet of the Union and the Soviet of Nationalities, have equal rights.

ARTICLE 38.—The Soviet of the Union and the Soviet of Nationalities have equal powers to initiate legislation.

ARTICLE 39.—A law is considered adopted if passed by both Chambers of the Supreme Soviet of the U.S.S.R. by a simple majority vote in each.

ARTICLE 40.—Laws passed by the Supreme Soviet of the U.S.S.R. are published in the languages of the Union Republics over the signatures of the President and Secretary of the Presidium of the Supreme Soviet of the U.S.S.R.

ARTICLE 41.—Sessions of the Soviet of the Union and of the Soviet of Nationalities begin and terminate simultaneously.

ARTICLE 42.—The Soviet of the Union elects a Chairman of the Soviet of the Union and two Vice-Chairmen.

ARTICLE 43.—The Soviet of Nationalities elects a Chairman of the Soviet of Nationalities and two Vice-Chairmen.

ARTICLE 44.—The Chairmen of the Soviet of the Union and the Soviet of Nationalities preside at the sittings of the respective Chambers and have charge of the conduct of their business and proceedings.

ARTICLE 45.—Joint sittings of the two Chambers of the Supreme Soviet of the U.S.S.R. are presided over alternately by the Chairman of the Soviet of the Union and the Chairman of the Soviet of Nationalities.

ARTICLE 46.—Sessions of the Supreme Soviet of the U.S.S.R. are convened by the Presidium of the Supreme Soviet of the U.S.S.R. twice a year.

Extraordinary sessions are convened by the Presidium of the Supreme Soviet of the U.S.S.R. at its discretion or on the demand of one of the Union Republics.

ARTICLE 47.—In the event of disagreement between the Soviet of the Union and the Soviet of Nationalities, the question is referred for settlement to a conciliation commission formed on a parity basis. If the conciliation commission fails to arrive at an agreement, or if its decision fails to satisfy one of the Chambers, the question is considered for a second time by the Chambers. Failing agreement between the two Chambers, the Presidium of the Supreme Soviet of the U.S.S.R. dissolves the Supreme Soviet of the U.S.S.R. and orders new elections.

ARTICLE 48.—The Supreme Soviet of the U.S.S.R. at a joint sitting of the two Chambers elects the Presidium of the Supreme Soviet of the U.S.S.R. consisting of a President of the Presidium of the Supreme Soviet of the U.S.S.R., sixteen Vice-Presidents, a Secretary of the Presidium and fifteen members of the Presidium of the Supreme Soviet of the U.S.S.R.

The Presidium of the Supreme Soviet of the U.S.S.R. is accountable to the Supreme Soviet of the U.S.S.R. for all its activities.

ARTICLE 49. The Presidium of the Supreme Soviet of the U.S.S.R.:

(a) Convenes the sessions of the Supreme Soviet of the U.S.S.R.;

(b) Issues decrees;

(c) Gives interpretations of the laws of the U.S.S.R. in operation;

(d) Dissolves the Supreme Soviet of the U.S.S.R. in conformity with Article 47 of the Constitution of the U.S.S.R. and orders new elections;

(e) Conducts nation-wide polls (referendums) on its own initiative or on the demand of one of the Union Republics;

(f) Annuls decisions and orders of the Council of Ministers of the U.S.S.R. and of the Councils of Ministers of the Union Republics if they do not conform to law;

(g) In the intervals between sessions of the Supreme Soviet of the U.S.S.R. releases and appoints Ministers of the U.S.S.R. on the recommendation of the Chairman of the Council of Ministers of the U.S.S.R., subject to subsequent confirmation by the Supreme Soviet of the U.S.S.R.;

(h) Institutes decorations (orders and medals) and titles of honour of the U.S.S.R.;

(i) Awards orders and medals and confers titles of honour of the U.S.S.R.;

(j) Exercises the right of pardon;

(k) Institutes military titles, diplomatic ranks and other special titles;

(l) Appoints and removes the high command of the Armed Forces of the U.S.S.R.;

(m) In the intervals between sessions of the Supreme Soviet of the U.S.S.R., proclaims a state of war in the event of military attack on the U.S.S.R., or when necessary to fulfil international treaty obligations concerning mutual defence against aggression;

(n) Orders general or partial mobilisation;

(o) Ratifies and denounces international treaties of the U.S.S.R.;

(p) Appoints and recalls plenipotentiary representatives of the U.S.S.R. to foreign states;

(q) Receives the letters of credence and recall of diplomatic representatives accredited to it by foreign states;

(7) Proclaims martial law in separate localities or throughout the U.S.S.R. in the interests of the defence of the U.S.S.R., or of the maintenance of public order and the security of the state.

ARTICLE 50.—The Soviet of the Union and the Soviet of Nationalities elect Credentials Committees to verify the credentials of the members of the respective Chambers.

On the report of the Credentials Committees, the Chambers decide whether to recognise the credentials of deputies, or to annul their election

ARTICLE 51.—The Supreme Soviet of the U.S.S.R., when it deems necessary, appoints commissions of investigation and audit on any matter.

It is the duty of all institutions and officials to comply with the demands of such commissions and to submit to them all necessary materials and documents.

ARTICLE 52.—A member of the Supreme Soviet of the U.S.S.R. may not be prosecuted or arrested without the consent of the Supreme Soviet of the U.S.S.R., or, when the Supreme Soviet of the U.S.S.R. is not in session, without the consent of the Presidium of the Supreme Soviet of the U.S.S.R.

ARTICLE 53.—On the expiration of the term of office of the Supreme Soviet of the U.S.S.R., or on its dissolution prior to the expiration of its term of office, the Presidium of the Supreme Soviet of the U.S.S.R. retains its powers until the newly-elected Supreme Soviet of the U.S.S.R. shall have formed a new Presidium of the Supreme Soviet of the U.S.S.R.

ARTICLE 54.—On the expiration of the term of office of the Supreme Soviet of the U.S.S.R., or in the event of its dissolution prior to the expiration of its term of office, the Presidium of the Supreme Soviet of the U.S.S.R. orders new elections to be held within a period not exceeding two months from the date of expiration of the term of office or dissolution of the Supreme Soviet of the U.S.S.R.

ARTICLE 55.—The newly-elected Supreme Soviet of the U.S.S.R. is convened by the outgoing Presidium of the Supreme Soviet of the U.S.S.R. not later than three months after the elections.

ARTICLE 56.—The Supreme Soviet of the U.S.S.R., at a joint sitting of the two Chambers, appoints the Government of the U.S.S.R., namely, the Council of Ministers of the U.S.S.R.

CHAPTER IV

The Higher Organs of State Power in the Union Republics

ARTICLE 57.—The highest organ of state power in a Union Republic is the Supreme Soviet of the Union Republic.

ARTICLE 58.—The Supreme Soviet of a Union Republic is elected by the citizens of the Republic for a term of four years.

The basis of representation is established by the Constitution of the Union Republic.

ARTICLE 59.—The Supreme Soviet of a Union Republic is the sole legislative organ of the Republic.

ARTICLE 60.—The Supreme Soviet of a Union Republic:

(a) Adopts the Constitution of the Republic and amends it in conformity with Article 16 of the Constitution of the U.S.S.R.;

(b) Confirms the Constitutions of the Autonomous Republics forming part of it and defines the boundaries of their territories;

(c) Approves the national-economic plan and the budget of the Republic;

(d) Exercises the right of amnesty and pardon of citizens sentenced by the judicial organs of the Union Republic;

(e) Decides questions of representation of the Union Republic in its international relations;

(f) Determines the manner of organising the Republic's military formations.

ARTICLE 61.—The Supreme Soviet of a Union Republic elects the Presidium of the Supreme Soviet of the Union Republic, consisting of a President of the Presidium of the Supreme Soviet of the Union Republic, Vice-Presidents, a Secretary of the Presidium and members of the Presidium of the Supreme Soviet of the Union Republic.

The powers of the Presidium of the Supreme Soviet of a Union Republic are defined by the Constitution of the Union Republic.

ARTICLE 62.—The Supreme Soviet of a Union Republic elects a Chairman and Vice-Chairmen to conduct its sittings.

ARTICLE 63.—The Supreme Soviet of a Union Republic appoints the Government of the Union Republic, namely, the Council of Ministers of the Union Republic.

CHAPTER V

The Organs of State Administration of the Union of Soviet Socialist Republics

ARTICLE 64.—The highest executive and administrative organ of the state power of the Union of Soviet Socialist Republics is the Council of Ministers of the U.S.S.R.

ARTICLE 65.—The Council of Ministers of the U.S.S.R. is responsible and accountable to the Supreme Soviet of the U.S.S.R., or, in the intervals between sessions of the Supreme Soviet, to the Presidium of the Supreme Soviet of the U.S.S.R.

ARTICLE 66.—The Council of Ministers of the U.S.S.R. issues decisions and orders on the basis and in pursuance of the laws in operation, and verifies their execution.

ARTICLE 67.—Decisions and orders of the Council of Ministers of the U.S.S.R. are binding throughout the territory of the U.S.S.R.

ARTICLE 68.—The Council of Ministers of the U.S.S.R.:

(a) Co-ordinates and directs the work of the all-Union and Union-Republican Ministries of the U.S.S.R. and of other institutions under its jurisdiction;

(b) Adopts measures to carry out the national-economic plan and the state budget, and to strengthen the credit and monetary system;

(c) Adopts measures for the maintenance of public order, for the protection of the interests of the state, and for the safeguarding of the rights of citizens;

(d) Exercises general guidance in the sphere of relations with foreign states;

(e) Fixes the annual contingent of citizens to be called up for military service and directs the general organisation of the Armed Forces of the country;

(f) Sets up, whenever necessary, special Committees and Central Administrations under the Council of Ministers of the U.S.S.R. for economic and cultural affairs and defence.

ARTICLE 69.—The Council of Ministers of the U.S.S.R. has the right, in respect of those branches of administration and economy which come within the jurisdiction of the U.S.S.R., to

suspend decisions and orders of the Councils of Ministers of the Union Republics and to annul orders and instructions of Ministers of the U.S.S.R.

ARTICLE 70.—The Council of Ministers of the U.S.S.R. is appointed by the Supreme Soviet of the U.S.S.R. and consists of:

The Chairman of the Council of Ministers of the U.S.S.R.;
The Vice-Chairmen of the Council of Ministers of the U.S.S.R.;

The Chairman of the State Planning Commission of the U.S.S.R.;

The Ministers of the U.S.S.R.;

The Chairman of the Arts Committee.

ARTICLE 71.—The Government of the U.S.S.R. or a Minister of the U.S.S.R. to whom a question of a member of the Supreme Soviet of the U.S.S.R. is addressed, must give a verbal or written reply in the respective Chamber within a period not exceeding three days.

ARTICLE 72.—The Ministers of the U.S.S.R. direct the branches of state administration which come within the jurisdiction of the U.S.S.R.

ARTICLE 73.—The Ministers of the U.S.S.R., within the limits of the jurisdiction of their respective Ministries, issue orders and instructions on the basis and in pursuance of the laws in operation, and also of decisions and orders of the Council of Ministers of the U.S.S.R., and verify their execution.

ARTICLE 74.—The Ministries of the U.S.S.R. are either all-Union or Union-Republican Ministries.

ARTICLE 75.—Each all-Union Ministry directs the branch of state administration entrusted to it throughout the territory of the U.S.S.R. either directly or through bodies appointed by it.

ARTICLE 76.—The Union-Republican Ministries, as a rule, direct the branches of state administration entrusted to them through corresponding Ministries of the Union Republics; they administer directly only a definite and limited number of enterprises according to a list confirmed by the Presidium of the Supreme Soviet of the U.S.S.R.

ARTICLE 77.—The following Ministries are all-Union Ministries:

- Aircraft Industry.
- Automobile Industry.
- Foreign Trade.
- Munitions.
- Geological Survey.
- Agricultural Stocks.
- Material Reserves.
- Machine and Instrument-Making Industry.
- Medical Supplies Industry.
- Merchant Marine.
- Oil Industry of the Eastern Areas.
- Oil Industry of the Southern and Western Areas.
- Food Reserves.
- Communications Equipment Industry.
- Railways.
- Rubber Industry.
- Inland Water Transport.
- Communications.
- Agricultural Machinery Industry.
- Machine-Tool Industry.
- Building and Road Building Machinery Industry.
- Construction of Army and Navy Works.
- Construction of Heavy Industry Works.
- Construction of Fuel Industry Works.
- Shipbuilding.
- Transport Machinery Industry.
- Labour Reserves.
- Heavy Machine-Building Industry.
- Coal Industry of the Eastern Areas.
- Coal Industry of the Western Areas.
- Chemical Industry.
- Non-Ferrous Metals Industry.
- Pulp and Paper Industry.
- Iron and Steel Industry.
- Electrical Industry.
- Power Stations

ARTICLE 78.—The following Ministries are Union-Republican Ministries:

Grocery Supplies Industry.
Internal Affairs.
Armed Forces.
Higher Education.
State Control.
State Security.
Public Health.
Foreign Affairs.
Cinematography.
Light Industry.
Timber Industry.
Meat and Dairy Industry.
Food Industry.
Building Materials Industry.
Fish Industry of the Eastern Areas.
Fish Industry of the Western Areas.
Agriculture.
State Farms.
Textile Industry.
Trade.
Finance.
Justice.

CHAPTER VI

The Organs of State Administration of the Union Republics

ARTICLE 79.—The highest executive and administrative organ of the state power of a Union Republic is the Council of Ministers of the Union Republic.

ARTICLE 80.—The Council of Ministers of a Union Republic is responsible and accountable to the Supreme Soviet of the Union Republic, or, in the intervals between sessions of the Supreme Soviet of the Union Republic, to the Presidium of the Supreme Soviet of the Union Republic.

ARTICLE 81.—The Council of Ministers of a Union Republic issues decisions and orders on the basis and in pursuance of the laws in operation of the U.S.S.R. and of the Union Republic, and of the decisions and orders of the Council of Ministers of the U.S.S.R., and verifies their execution.

ARTICLE 82.—The Council of Ministers of a Union Republic has the right to suspend decisions and orders of the Councils of Ministers of its Autonomous Republics, and to annul decisions and orders of the Executive Committees of the Soviets of Working People's Deputies of its Territories, Regions and Autonomous Regions.

ARTICLE 83.—The Council of Ministers of a Union Republic is appointed by the Supreme Soviet of the Union Republic and consists of:

The Chairman of the Council of Ministers of the Union Republic;

The Vice-Chairmen of the Council of Ministers;

The Chairman of the State Planning Commission;

The Ministers;

The Chief of the Department of Arts;

The Chairman of the Committee for Cultural and Educational Institutions.

ARTICLE 84.—The Ministers of a Union Republic direct the branches of state administration which come within the jurisdiction of the Union Republic.

ARTICLE 85.—The Ministers of a Union Republic, within the limits of the jurisdiction of their respective Ministries, issue orders and instructions on the basis and in pursuance of the laws of the U.S.S.R. and of the Union Republic, of the decisions and orders of the Council of Ministers of the U.S.S.R. and the Council of Ministers of the Union Republic, and of the orders and instructions of the Union-Republican Ministries of the U.S.S.R.

ARTICLE 86.—The Ministries of a Union Republic are either Union-Republican or Republican Ministries.

ARTICLE 87.—Each Union-Republican Ministry directs the branch of state administration entrusted to it, and is subordinate both to the Council of Ministers of the Union Republic and to the corresponding Union-Republican Ministry of the U.S.S.R.

ARTICLE 88.—Each Republican Ministry directs the branch of state administration entrusted to it, and is directly subordinate to the Council of Ministers of the Union Republic.

CHAPTER VII

The Higher Organs of State Power in the Autonomous Soviet Socialist Republics

ARTICLE 89.—The highest organ of state power in an Autonomous Soviet Socialist Republic is the Supreme Soviet of the Autonomous Republic.

ARTICLE 90.—The Supreme Soviet of an Autonomous Republic is elected by the citizens of the Republic for a term of four years on a basis of representation established by the Constitution of the Autonomous Republic.

ARTICLE 91.—The Supreme Soviet of an Autonomous Republic is the sole legislative organ of the Autonomous Republic.

ARTICLE 92.—Each Autonomous Republic has its own Constitution, which takes account of the specific features of the Autonomous Republic and is drawn up in full conformity with the Constitution of the Union Republic.

ARTICLE 93.—The Supreme Soviet of an Autonomous Republic elects the Presidium of the Supreme Soviet of the Autonomous Republic and appoints the Council of Ministers of the Autonomous Republic, in accordance with its Constitution.

CHAPTER VIII

The Local Organs of State Power

ARTICLE 94.—The organs of state power in territories, regions, autonomous regions, areas, districts, cities and rural localities (stanitsas, villages, hamlets, kishlaks, auls) are the Soviets of Working People's Deputies.

ARTICLE 95.—The Soviets of Working People's Deputies of territories, regions, autonomous regions, areas, districts, cities and rural localities (stanitsas, villages, hamlets, kishlaks, auls) are elected by the working people of the respective territories, regions, autonomous regions, areas, districts, cities or rural localities for a term of two years.

ARTICLE 96.—The basis of representation for Soviets of Working People's Deputies is determined by the Constitutions of the Union Republics.

ARTICLE 97.—The Soviets of Working People's Deputies direct the work of the organs of administration subordinate to them, ensure the maintenance of public order, the observance of the laws and the protection of the rights of citizens, direct local economic and cultural affairs and draw up the local budgets.

ARTICLE 98.—The Soviets of Working People's Deputies adopt decisions and issue orders within the limits of the powers vested in them by the laws of the U.S.S.R. and of the Union Republic.

ARTICLE 99.—The executive and administrative organ of the Soviet of Working People's Deputies of a territory, region, autonomous region, area, district, city or rural locality is the Executive Committee elected by it, consisting of a Chairman, Vice-Chairmen, a Secretary and members.

ARTICLE 100.—The executive and administrative organ of the Soviet of Working People's Deputies in a small locality, in accordance with the Constitution of the Union Republic, is the Chairman, the Vice-Chairman and the Secretary elected by it.

ARTICLE 101.—The executive organs of the Soviets of Working People's Deputies are directly accountable both to the Soviets of Working People's Deputies which elected them and to the executive organ of the superior Soviet of Working People's Deputies.

CHAPTER IX

The Courts and the Procurator's Office

ARTICLE 102.—In the U.S.S.R. justice is administered by the Supreme Court of the U.S.S.R., the Supreme Courts of the Union Republics, the Courts of the Territories, Regions, Autonomous Republics, Autonomous Regions and Areas, the Special Courts of the U.S.S.R. established by decision of the Supreme Soviet of the U.S.S.R., and the People's Courts.

ARTICLE 103.—In all courts cases are tried with the participation of people's assessors, except in cases specially provided for by law.

ARTICLE 104.—The Supreme Court of the U.S.S.R. is the highest judicial organ. The Supreme Court of the U.S.S.R. is charged with the supervision of the judicial activities of all the judicial organs of the U.S.S.R. and of the Union Republics.

ARTICLE 105.—The Supreme Court of the U.S.S.R. and the Special Courts of the U.S.S.R. are elected by the Supreme Soviet of the U.S.S.R. for a term of five years.

ARTICLE 106.—The Supreme Courts of the Union Republics are elected by the Supreme Soviets of the Union Republics for a term of five years.

ARTICLE 107.—The Supreme Courts of the Autonomous Republics are elected by the Supreme Soviets of the Autonomous Republics for a term of five years.

ARTICLE 108.—The courts of Territories, Regions, Autonomous Regions and Areas are elected by the Soviets of Working People's Deputies of the respective Territories, Regions, Autonomous Regions or Areas for a term of five years.

ARTICLE 109.—People's Courts are elected by the citizens of the district on the basis of universal, direct and equal suffrage by secret ballot for a term of three years.

ARTICLE 110.—Judicial proceedings are conducted in the language of the Union Republic, Autonomous Republic or Autonomous Region, persons not knowing this language being

guaranteed the opportunity of fully acquainting themselves with the material of the case through an interpreter and likewise the right to use their own language in court.

ARTICLE 111.—In all courts of the U.S.S.R. cases are heard in public, unless otherwise provided for by law, and the accused is guaranteed the right to defence.

ARTICLE 112.—Judges are independent and subject only to the law.

ARTICLE 113.—Supreme supervisory power to ensure the strict observance of the law by all Ministries and institutions subordinated to them, as well as by officials and citizens of the U.S.S.R. generally, is vested in the Procurator-General of the U.S.S.R.

ARTICLE 114.—The Procurator-General of the U.S.S.R. is appointed by the Supreme Soviet of the U.S.S.R. for a term of seven years.

ARTICLE 115.—Procurators of Republics, Territories, Regions, Autonomous Republics and Autonomous Regions are appointed by the Procurator-General of the U.S.S.R. for a term of five years.

ARTICLE 116.—Area, district and city procurators are appointed by the Procurators of the Union Republics, subject to the approval of the Procurator-General of the U.S.S.R., for a term of five years.

ARTICLE 117.—The organs of the Procurator's Office perform their functions independently of any local organs whatsoever, being subordinate solely to the Procurator-General of the U.S.S.R.

CHAPTER X

Fundamental Rights and Duties of Citizens

ARTICLE 118.—Citizens of the U.S.S.R. have the right to work, that is, the right to guaranteed employment and payment for their work in accordance with its quantity and quality.

The right to work is ensured by the socialist organisation of the national economy, the steady growth of the productive forces of Soviet society, the elimination of the possibility of economic crises, and the abolition of unemployment.

ARTICLE 119.—Citizens of the U.S.S.R. have the right to rest and leisure.

The right to rest and leisure is ensured by the establishment of an eight-hour day for factory and office workers, the reduction of the working day to seven or six hours for arduous trades and to four hours in shops where conditions of work are particularly arduous, by the institution of annual vacations with full pay for factory and office workers, and by the provision of a wide network of sanatoria, rest-homes and clubs for the accommodation of the working people.

ARTICLE 120.—Citizens of the U.S.S.R. have the right to maintenance in old age and also in case of sickness or disability.

This right is ensured by the extensive development of social insurance of factory and office workers at state expense, free medical service for the working people, and the provision of a wide network of health resorts for the use of the working people.

ARTICLE 121.—Citizens of the U.S.S.R. have the right to education.

This right is ensured by universal and compulsory elementary education; by free education up to and including the seventh grade, by a system of state stipends for students of higher educational establishments who excel in their studies; by instruction in schools being conducted in the native language, and by the organisation in the factories, state farms, machine and tractor stations, and collective farms of free vocational, technical and agronomic training for the working people.

ARTICLE 122.—Women in the U.S.S.R. are accorded equal rights with men in all spheres of economic, government, cultural, political and other public activity.

The possibility of exercising these rights is ensured by women being accorded an equal right with men to work, payment for work, rest and leisure, social insurance and education, and by state protection of the interests of mother and child, state aid to mothers of large families and unmarried mothers, maternity leave with full pay, and the provision of a wide network of maternity homes, nurseries and kindergartens.

ARTICLE 123.—Equality of rights of citizens of the U.S.S.R., irrespective of their nationality or race, in all spheres of economic, government, cultural, political and other public activity, is an indefeasible law. " "

Any direct or indirect restriction of the rights of, or, conversely, the establishment of any direct or indirect privileges for, citizens on account of their race or nationality, as well as any advocacy of racial or national exclusiveness or hatred and contempt, is punishable by law.

ARTICLE 124.—In order to ensure to citizens freedom of conscience, the church in the U.S.S.R. is separated from the state, and the school from the church. Freedom of religious worship and freedom of anti-religious propaganda is recognised for all citizens.

ARTICLE 125.—In conformity with the interests of the working people, and in order to strengthen the socialist system, the citizens of the U.S.S.R. are guaranteed by law:

- (a) freedom of speech;
- (b) freedom of the press;
- (c) freedom of assembly, including the holding of mass meetings;
- (d) freedom of street processions and demonstrations.

These civil rights are ensured by placing at the disposal of the working people and their organisations printing presses, stocks of paper, public buildings, the streets, communications facilities and other material requisites for the exercise of these rights.

ARTICLE 126.—In conformity with the interests of the working people, and in order to develop the organisational initiative and political activity of the masses of the people, citizens of the U.S.S.R. are guaranteed the right to unite in public organisations: trade unions, co-operative societies, youth organisations, sport and defence organisations, cultural, technical and scientific societies; and the most active and politically-conscious citizens in the ranks of the working class and other sections of the working people unite in the Communist Party

of the Soviet Union (Bolsheviks), which is the vanguard of the working people in their struggle to strengthen and develop the socialist system and is the leading core of all organisations of the working people, both public and state.

ARTICLE 127.—Citizens of the U.S.S.R. are guaranteed inviolability of the person. No person may be placed under arrest except by decision of a court or with the sanction of a procurator.

ARTICLE 128.—The inviolability of the homes of citizens and privacy of correspondence are protected by law.

ARTICLE 129.—The U.S.S.R. affords the right of asylum to foreign citizens persecuted for defending the interests of the working people, or for scientific activities, or for struggling for national liberation.

ARTICLE 130.—It is the duty of every citizen of the U.S.S.R. to abide by the Constitution of the Union of Soviet Socialist Republics, to observe the laws, to maintain labour discipline, honestly to perform public duties, and to respect the rules of socialist intercourse.

ARTICLE 131.—It is the duty of every citizen of the U.S.S.R. to safeguard and fortify public, socialist property as the sacred and inviolable foundation of the Soviet system, as the source of the wealth and might of the country, as the source of the prosperity and culture of all the working people.

Persons committing offences against public, socialist property are enemies of the people.

ARTICLE 132.—Universal military service is law.

Military service in the Armed Forces of the U.S.S.R. is an honourable duty of the citizens of the U.S.S.R.

ARTICLE 133.—To defend the country is the sacred duty of every citizen of the U.S.S.R. Treason to the motherland—violation of the oath of allegiance, desertion to the enemy, impairing the military power of the state, espionage—is punishable with all the severity of the law as the most heinous of crimes.

CHAPTER XI

The Electoral System

ARTICLE 134.—Members of all Soviets of Working People's Deputies—of the Supreme Soviet of the U.S.S.R., the Supreme Soviets of the Union Republics, the Soviets of Working People's Deputies of the Territories and Regions, the Supreme Soviets of the Autonomous Republics, the Soviets of Working People's Deputies of the Autonomous Regions, and the area, district, city and rural (stanitsa, village, hamlet, kishlak, aul) Soviets of Working People's Deputies—are chosen by the electors on the basis of universal, equal and direct suffrage by secret ballot.

ARTICLE 135.—Elections of deputies are universal: all citizens of the U.S.S.R. who have reached the age of eighteen, irrespective of race or nationality, sex, religion, education, domicile, social origin, property status or past activities, have the right to vote in the election of deputies, with the exception of insane persons and persons who have been convicted by a court of law and whose sentences include deprivation of electoral rights. See 36 p 2

Every citizen of the U.S.S.R. who has reached the age of twenty-three is eligible for election to the Supreme Soviet of the U.S.S.R., irrespective of race or nationality, sex, religion, education, domicile, social origin, property status or past activities.

ARTICLE 136.—Elections of deputies are equal: each citizen has one vote; all citizens participate in elections on an equal footing.

ARTICLE 137.—Women have the right to elect and be elected on equal terms with men.

ARTICLE 138.—Citizens serving in the Armed Forces of the U.S.S.R. have the right to elect and be elected on equal terms with all other citizens.

ARTICLE 139.—Elections of deputies are direct; all Soviets of Working People's Deputies, from rural and city Soviets of Working People's Deputies to the Supreme Soviet of the U.S.S.R., are elected by the citizens by direct vote.

ARTICLE 140.—Voting at elections of deputies is secret.

ARTICLE 141.—Candidates are nominated by election district

The right to nominate candidates is secured to public organisations and societies of the working people: Communist Party organisations, trade unions, co-operatives, youth organisations and cultural societies.

ARTICLE 142.—It is the duty of every deputy to report to his electors on his work and on the work of his Soviet of Working People's Deputies, and he may be recalled at any time upon decision of a majority of the electors in the manner established by law.

CHAPTER XII

Arms, Flag, Capital

ARTICLE 143.--The arms of the Union of Soviet Socialist Republics are a sickle and hammer against a globe depicted in the rays of the sun and surrounded by ears of grain, with the inscription "Workers of All Countries, Unite!" in the languages of the Union Republics. At the top of the arms is a five-pointed star.

ARTICLE 144.--The state flag of the Union of Soviet Socialist Republics is of red cloth with the sickle and hammer depicted in gold in the upper corner near the staff and above them a five-pointed red star bordered in gold. The ratio of the width to the length is 1:2.

ARTICLE 145.--The capital of the Union of Soviet Socialist Republics is the City of Moscow.

*CHAPTER XIII***Procedure for Amending the
Constitution**

ARTICLE 146.—The Constitution of the U.S.S.R. may be amended only by decision of the Supreme Soviet of the U.S.S.R. adopted by a majority of not less than two-thirds of the votes in each of its Chambers.

Mr. PEREZ. Now, then, I want to cite as authority of the next phase of my dissertation on this bill, which purports to carry out the provision of the 15th amendment and which does not, because the 15th amendment is limited to the voting rights of citizens and this is for aliens, not citizens only—the U.S. Supreme Court, before its liberalization in 1936, in the case of *Herndon v. Lowry*, a case reported at 301 U.S. 242, took judicial cognizance and found as a fact that the policy of the Communist party in the South, particularly as it applies to Negroes, is to obtain the right of self-determination. I quote:

This means complete and unlimited right of the Negro majority to exercise governmental authority in the entire territory of the Black Belt.

The Black Belt consisted of the States of Louisiana, Mississippi, Alabama, Georgia and South Carolina, principally, the States involved in this bill.

Now, in the report of this case, and it is also the report of 57 Supreme Court and I read from pages 736 and 737, the U.S. Supreme Court said, and I quote:

A booklet entitled "The Communist Position on the Negro Question," on the cover of which appears a map of the United States having a dark belt across certain Southern States and the phrase "Self-Determination for the Black Belt," affirms that the source of the Communist slogan "Right of Self-Determination of the Negroes in the Black Belt" is a resolution of the Communist International on the Negro question in the United States adopted in 1930, which states that the Communist Party in the United States has been actively attempting to win increasing sympathy among the Negro population, that certain things have been advocated for the benefit of the Negroes in the Northern States, but that in the Southern portions of the United States the Communist slogan must be "The Right of Self-Determination of the Negroes in the Black Belt." The resolution defines the meaning of the slogan as:

(a) Confiscation of the landed property of the white landowners and capitalists for the benefit of the Negro farmers * * *. Without this revolutionary measure, without the agrarian revolution, the right of self-determination of the Negro population would be only a Utopia or, at best, would remain only on paper without changing in any way the actual enslavement.

(b) Establishment of the State unity of the Black Belt * * *. If the right of self-determination of the Negroes is to be put into force, it is necessary wherever possible to bring together into one governmental unit all districts of the South, where the majority of the settled population consists of Negroes * * *.

It goes on in detail to show that the right of self-determination who led to setting up of a separate government with the right of its own foreign relations, backed up by Russia. This most significant statement and further statements appear in the pamphlet—

Even if the situation does not yet warrant the raising of the question of uprising, one should not limit oneself at present to propaganda for the demand "Right to Self-Determination," but should organize mass actions, such as demonstrations, strikes, boycott movements, etc.

And I ask the committee and the members of Congress to give serious consideration to what has been going on under the leadership of Communist fronts in this country; carrying out the original Stalin plan until the time is ripe for revolution for self-determination in the Black Belt. Then they should organize mass actions such as demonstrations and boycott movements. Is that not the pattern? Of course it is. And that is the very pattern used to put pressure on the Congress of the United States, the very pattern that is encouraged right here in Washington.

Yes, the Communist Party advocated for the Black Belt voter registration of all Negroes, the unlimited right of the Negro majority to exercise governmental authority in the entire territory of the Black Belt as being unconditional and necessary in the ultimate struggle for the Negro's right to self-determination and overthrow of the yoke of American imperialism in the Black Belt.

I say to you gentlemen that this so-called voting rights act of 1965, this Senate bill 1564, goes right down the line to implement the Communist Party plan for the Black Belt and would provide its greatest impetus. There is no doubt about that; there is no doubt about that.

This bill, and I am sure there are several capable, honest, patriotic Americans who participated in it, possibly without knowing of the decision of the U.S. Supreme Court in the *Herndon case*, that this type of bill is what would furnish impetus to a Stalin Communist plan for the takeover of the Black Belt.

Oh, I know, we say it can't happen here. It could not happen over there, either, just the other side of Florida, but it did happen.

Now, if we let our imaginations run a little, gentlemen, if this Thaddeus Stevens bill, this nefarious piece of legislation, persecution against the States of the South is enacted into law, backed up by the coercive power of the Federal Government, and it certainly will be, and this Black Belt Communist conspiracy then is put into effect and the Negroes take over the governments in the Black Belt and declare their independence of the United States, what will happen? What will our State Department do? What would Mr. McNamara do if he is still in that position, when Russia says, "We have a hundred megaton bombs aimed at you and we believe that the Negroes have the right of self-determination. They freed themselves of American imperialism and we want to back them up. We have these hundred megatons."

What will happen then? Oh, it will not hurt us. No. What about the next generation? Do we not owe them a responsibility to hold this country, its traditions, its constitutional government, the liberties and freedom, the right of self-government of our people for them? Are we not responsible for bringing them into the world? Do we not owe any sense of responsibility at all to them? That is my plea to you gentlemen of Congress. Let us not be strictly political. Let us be Americans first. Let us be men and exhibit courage. We owe that responsibility to those we have brought into the world. We owe it as Americans in honor of our patriotic forefathers to support and protect the Constitution. Keep this the most wonderful country in the world. This type of legislation has no place in an American Congress in this day and time.

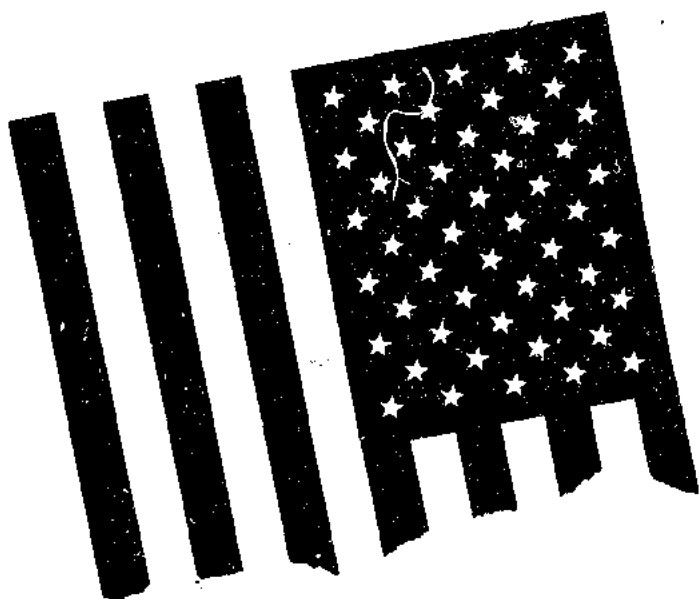
Now, then, to bear out the fact—and I say the fact—that these mass demonstrations, these boycotts and so on, are carrying out the pattern laid out by Stalin in his Black Belt conspiracy, and to prove it, I suggest to this committee that it have its staff check its records as to the Communist-front connections, activities, of the principal persons in the groups back of these mass action demonstrations and boycotts and put it of record of the hearing of this case so that Congress memory will be refreshed.

Let it be shown of record that the Congressional Record of February 23, 1956, pages 2805 and 2850, 45 pages of the Communist front record of the NAACP, with three-fourths of its directors, practically everyone of its national officials are members of Communist and Communist front organizations. I believe the total numbers about 2,000 memberships.

Next, and if I may, Mr. Chairman, here is a reproduction of what is in the Congressional Record, published under the title "Is the NAACP Subversive" by the Patrick Henry Group of Virginia. May I offer this as Perez Exhibit 3?

The CHAIRMAN. Yes, as an exhibit.

(The document referred to was marked "Perez Louisiana Exhibit No. 3" and is as follows:)



IS THE NAACP SUBVERSIVE?





The Patrick Henry Group What It Is

The Patrick Henry Group is composed of American citizens concerned with the trend of our times.

As might be expected, most of us are Virginians, some of us are Democrats, some are Republicans—every last one of us is a Conservative.

We support the traditional concept of States Rights and we advocate severely limited government.

We aren't incorporated, we are not deductable, we aren't anything but liberty-minded Americans who fight encroachment on the rights and responsibilities of the individual.

To that end we publish and disseminate literature we feel has patriotic merit. We have done a number of such pieces, the most successful—by far—being *Ripening Fruit*. T. Coleman Andrews wrote this tract some two years ago and, to date, it has gone through more than 20 printings.

THREE PIECES

1. *Ripening Fruit* tells the story of what has happened and what is happening to this country; why we are threatened with falling, as Lenin reputedly predicted, like ripening fruit into the hands of the Communists without a shot being fired.

2. Another of our offerings asks the question: *In the Supreme Court Pro-Communist?* then goes on to detail every case of consequence the Court has decided that involved subversive activities. The little book carries a listing—a sort of box score—that shows how each Justice voted on each case that came before him, and the total votes of each. How many votes each cast in support of the position advocated by the Communists and how many times each voted against the Communist position.

3. A third Patrick Henry Group offering is called *Why Rockefeller Can't Win*, written by John J. Symon.

Why Rockefeller Can't Win is an in-depth study of the political situation as it pertains today. It proves conclusively, to a reasonable mind, why Rockefeller couldn't possibly win the needed 270 Electoral-College votes, if he were to get the Republican nomination.

Fulton Lewis, Jr. thought so well of this booklet he gave two consecutive broadcast to it. He recommends it highly.

Ripening Fruit and *Is The Supreme Court Pro-Communist?* each sells for 50 cents; in lots of 10, they are \$4.00.

Why Rockefeller Can't Win sell for \$1.00; in lots of five, \$4.00.

YOUR TURN OF MIND

If The Patrick Henry Group seems to fit your turn of mind, if you would like to be a member, send \$5.00, once a year. All you will get in return is a wallet-sized card attesting your membership, you will get free copies of our publications as they come off the press and you will help defray the expense involved in our effort. You may also derive a mite of satisfaction in knowing you are doing something, too.

We hope you like us. We hope you like our books.

—The Patrick Henry Group



IS THE NAACP SUBVERSIVE?

THE PATRICK HENRY GROUP

Richmond, Virginia • P.O. Box 217

IS THE NAACP SUBVERSIVE?

ON MONDAY, July 29, 1963, The Honorable E. C. Gathings, Member of The House of Representatives from the First District of Arkansas, placed in the Congressional Record certain information dealing with the National Association for the Advancement of Colored People.

This information, Congressman Gathings reported, came from the files of the House Committee on Un-American Activities and related to "quite a number" of the officers, members of the board of Directors, legal, health and other committees of the NAACP, as well as to certain members of the organization's executive staff.

There follows, then, the history of these people as these histories appeared in the Congressional Record of that day.

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*FEBRUARY 13, 1950.

"SUBJECT: ROY WILKINS, national administrator and executive secretary, NAACP, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"The Daily Worker of July 15, 1949 (p. 5), in an article datelined Los Angeles, July 14, reported that 'Roy Wilkins, acting secretary of the National Association for the Advancement of Colored People, told a press conference * * * he voted for Benjamin J. Davis, Negro Communist, at the last election. Davis is now on trial for his Communist beliefs, along with 11 other national Communist Party leaders in New York City. Wilkins, however, refused any comment on the trial itself.' The same information appeared in the Daily People's World of July 13, 1949 (p. 1).

"Mr. Wilkins was a member of the national committee, International Judicial Association, as was shown on the leaflet entitled 'What is the IJA?' and a letterhead of the group dated May 18, 1942; he was identified as being from New York State. The special Committee on Un-American Activities cited the International Judicial Association as 'a Communist front and an offshot of the International Labor Defense' (report 1311 of March 29, 1944); the Committee on Un-American Activities cited the organization as having 'actively defended Communists and consistently followed the Communist Party line' (report dated September 17, 1950, p. 12.)

"A letterhead of the Conference on Pan American Democracy dated November 16, 1938, contains the name of Roy Wilkins in a list of sponsors of that group, cited by the Attorney General as subversive and Communist (press releases of June 1 and September 21, 1948; also included on his consolidated list released April 1, 1954); the special Committee on Un-American Activities cited the Conference as a Communist-front organization which defended Carlos Luiz Prestes, a Brazilian Communist leader and former member of the executive committee of the Communist International (report 1311 of March 29, 1944; also cited in report dated June 25, 1942).

"According to the Daily Worker of September 24, 1937 (p. 6), Roy Wilkins was one of the sponsors of a joint meeting of the American League Against War and Fascism and the American Friends of Chinese People.

"The American League Against War and Fascism was cited by the Attorney General as subversive and Communist (press releases of December 4, 1947, and September 21, 1948; also consolidated list of April 1, 1954); it had previously been cited by the Attorney General as a 'Communist-front organization' (in re Harry Bridges, May 28, 1942, p. 10); and as 'established in the United States in an effort to create public sentiment on behalf of a foreign policy adapted to the interests of the Soviet Union.' (CONGRESSIONAL RECORD, September 24, 1942, p. 7683.) The special Committee on Un-American Activities cited the American League * * * as 'completely under the control of

Communists' (reports of March 29, 1944; January 3, 1939; January 3, 1940; and June 25, 1942). American Friends of the Chinese People was also cited by the special Committee on Un-American Activities as a Communist-front organization (report of March 29, 1944).

"The Daily Worker of January 23, 1937 (p. 8), reported that Roy Wilkins spoke for the International Labor Defense in Brooklyn. The International Labor Defense was cited by the Attorney General as the legal arm of the Communist Party and as subversive and Communist. (CONGRESSIONAL RECORD, September 24, 1942, p. 7686; and press releases of June 1 and September 21, 1948; also included on consolidated list released April 1, 1954.) The special Committee on Un-American Activities cited the ILD as the legal arm of the Communist Party (reports of January 3, 1939; January 3, 1940; June 25, 1942; and March 29, 1944); the Committee on Un-American Activities also cited the group in a report released September 2, 1947.

"Roy Wilkins spoke at a New York State convention of the Workers Alliance, as reported in the Daily Worker of February 11, 1939 (p. 1), and February 7, 1939 (p. 5). The Workers Alliance was cited as a Communist-penetrated organization and later as subversive and Communist by the Attorney General (CONGRESSIONAL RECORD, September 24, 1942, p. 7684; and press releases on December 4, 1947, and September 21, 1948; included on consolidated list released April 1, 1954). The special committee cited the Workers Alliance as among the successes in the Communist-front movements (report dated January 3, 1939; also cited in reports of January 3, 1940; June 25, 1942; and March 29, 1944).

"In an article by Blaine Owen which appeared in the Daily Worker of June 17, 1936 (p. 1), entitled '1936 Communist Party Convention Significant to Negroes,' he stated: 'The greatest significance undoubtedly attends the 1936 convention of the Communist Party,' Roy Wilkins, assistant national secretary of the National Association for the Advancement of Colored People and editor of the Crisis, said today. 'It must be patent to anyone who has kept track of the news that the political leftwing--and especially the Communist program--has been an important factor in bringing the plight of the Negro people, along with other underprivileged groups, more sharply to the attention of those parties which have been in power. * * * Nevertheless, there is no doubt in my mind that the program and demands of the Communists have had a very wholesome effect on the Negro people themselves. They have been emboldened by the basic and basically right demands put forth.' This, it was pointed out to Wilkins, is what the Communist Party means when it bases its entire campaign on the proposal for and toward the realization of the broad People's Front. He nodded.

To understand the civil rights movement as propagated by the NAACP, I feel that a person must know something of the history and development of the American Negro movement here in the United States subsequent to the reconstruction period.

In 1895, Booker T. Washington, president of Tuskegee Institute, Alabama, was selected to speak for the southern Negro at the Atlanta

Exposition. Dr. Washington stated his position clearly and with great effect. I would like to quote several paragraphs from Booker T. Washington's address which I feel sum up the entire philosophy enunciated by him and his group:

"The wisest among my race understand that the agitation of questions of social equality is the extremest folly, and that progress in the enjoyment of all the privileges that will come to us must be the result of severe and constant struggle rather than of artificial forcing. No race that has anything to contribute to the markets of the world is long in any degree ostracized. It is important and right that all privileges of the law be ours, but it is vastly more important that we be prepared for the exercises of these privileges. The opportunity to earn a dollar in a factory just now is worth infinitely more than the opportunity to spend a dollar in an opera house."

Also:

"Cast it down in agricultural, mechanics, in commerce, in domestic service, and in the professions. And in this connection it is well to bear in mind that whatever other sins the South may be called to bear, when it comes to business, pure and simple, it is in the South that the Negro is given a man's chance in the commercial world, and in nothing is this exposition more eloquent than in emphasizing this chance. Our greatest danger is that in the great leap from slavery to freedom we may overlook the fact that the masses of us are to live by the productions of our hands, and fail to keep in mind that we shall prosper in proportion as we learn to dignify and glorify common labor and put brains and skills into the common occupations of life; shall prosper in proportion as we learn to draw the line between the superficial and the substantial, the ornamental gewgaws of life and the useful. No race can prosper till it learns that there is as much dignity in tilling a field as in writing a poem. It is at the bottom of life we must begin, and not at the top. Nor should we permit our grievances to overshadow our opportunities."

There was an entirely different school of thought, however, which was headed by Dr. W. E. B. DuBois, of Atlantic University. Dr. DuBois was a very bitter critic of the Washingtonian movement which he referred to as "the Tuskegee machine." Dr. DuBois was the leader of the leftwing element of American Negro Society which, in 1905, met at Niagara Falls, N.Y., and devised plans whereby complete social equality could be attained. This group was subsequently called the Niagara movement.

The Niagara movement was not very effective, because it was hampered by lack of funds. However, in 1908, a race riot occurred in Springfield, Ill., the home of Abraham Lincoln, which aroused the interest of the dormant abolitionist movement in the North. As a result of the feeling which was aroused by the Springfield race riots, William English Walling made a strong appeal for the emancipation of the American Negro in the fields of political and social equality. This appeal later became the clarion for the formation of a new organization, called National Association for the Advancement of Colored People, which joined the white liberals of the northern

abolitionist traditions with the Negro liberals of the Niagara movement.

Dr. DuBois was one of the founding fathers of the present-day NAACP, which was founded in 1909. This Dr. DuBois, who broke away from the Booker T. Washington group, was the leader of the Niagara movement. His record of citations from the House Committee on Un-American Activities takes up on nine pages single spaced:

"FEBRUARY 21, 1956.

"SUBJECT: DR. W. E. B. DuBOIS, founder NAACP, leader, Niagara movement.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"The Worker (Sunday edition of the Communist publication, the Daily Worker) on April 27, 1947, reported that "almost 100 Negro leaders, headed by W. E. B. DuBois, Paul Robeson, and Roscoe Dunjee, last week called upon President Truman 'to repudiate decisively' steps to 'illegalize the Communist Party.' * * * As Negro Americans * * * we cannot be unmindful that this proposal to outlaw the Communist Party comes precisely when our Federal Government professes grave concern over the democratic rights of peoples in far distant parts of the world" (p. 8 of the Worker).

"Dr. DuBois sponsored a statement attacking the arrest of Communist Party leaders (Daily Worker, Aug. 23, 1948, p. 3); he sponsored a 'Statement by Negro Americans' on behalf of the Communist leaders (the Worker of Aug. 29, 1948, p. 11); he filed a brief in the Supreme Court on behalf of the 12 Communist leaders (Daily Worker, Jan. 9, 1949, p. 3); he signed statements on behalf of Communist leaders, as shown in the following sources: Daily Worker, January 17, 1949 (p. 3); February 28, 1949 (p. 9); Daily People's World, May 12, 1950 (p. 12); Daily Worker, September 19, 1950 (p. 2); and in 1952, he signed an appeal to President Truman, requesting amnesty for leaders of the Communist Party convicted under the Smith Act (Daily Worker, Dec. 10, 1952, p. 4); also an appeal on their behalf addressed to President Eisenhower (Daily People's World, Nov. 17, 1954, p. 2). Dr. DuBois was one of the sponsors of the National Non-Partisan Committee To Defend the Rights of the 12 Communist Leaders, as shown on the back of their letterhead dated September 9, 1949.

"A statement on behalf of Eugene Dennis, a Communist, contained the signature of Dr. DuBois, identified as an educator (Daily Worker of May 5, 1950, p. 2); he signed a telegram of the National Committee To Win Amnesty for Smith Act Victims, greeting Eugene Dennis on his 48th birthday (Daily Worker, August 11, 1952, p. 3); Eugene Dennis was formerly secretary general of the Communist Party.

The Daily Worker of August 2, 1949 (p. 2), disclosed that Dr. DuBois endorsed Benjamin J. Davis, Jr., well-known Communist leader; he was honorary chairman of the Committee To Defend V. J. Jerome, chairman, cultural commission of the Communist Party, United States of American (letterhead dated June 24, 1952). A leaflet

of the Civil Rights Congress (dated March 20, 1947) named Dr. DuBois as having defended Gerhart Eisler, Communist. He was one of the sponsors of the Committee To Defend Alexander Tractenberg, former member of the national committee of the Communist Party (Daily People's World of April 17, 1952, p. 7; and the Daily Worker of April 18, 1952, p. 6).

"The Daily Worker of February 18, 1948 (p. 16), reported that some 80 leading New York civic leaders, trade unionists, and professionals yesterday joined Dr. William Jay Schieffelin, president emeritus of the citizens union, to demand the prompt seating of Simon W. Gerson to the city council seat made vacant by the death of Councilman Peter V. Cacchione, Brooklyn Communist. * * * The civic leaders' statement is directed to Mayor O'Dwyer and city council majority leader Joseph T. Charkey. It is a reprint of a letter to the New York Times by Dr. Schieffelin in which he charges that the real reason for the refusal to seal German (sic. Gerson) is "the current anti-Communist hysteria." Dr. DuBois was named as having signed the statement. (See also advertisement in New York Times of February 19, 1948, p. 13).

"Dr. DuBois was a member of a committee formed to protest the arrest of Pablo Neruda, Communist Chilean senator and world famous poet; he signed a statement of the organization in support of Neruda. (Daily Worker of April 7, 1948, p. 13, and April 10, 1950, p. 2, respectively.) He was sponsor of a reception and testimonial for Harry Sacher, defense attorney for the Communist leaders. (Daily Worker of December 5, 1949, p. 2.)

"When Earl Browder (then general secretary, Communist Party) was in Atlanta Penitentiary serving a sentence involving his fraudulent passports, the Communist Party's front which agitated for his release was known as the Citizens' Committee to Free Earl Browder (special Committee on Un-American Activities in Report 1311 of March 29, 1944); the Attorney General of the United States had cited the Citizens' Committee as Communist (CONGRESSIONAL RECORD, Sept. 24, 1942, p. 7687, and press release of Apr. 27, 1949). Dr. DuBois was a member of the Citizens' Committee * * * in 1942, as shown on their letterhead dated February 11, 1942; he sponsored a dinner of the group, according to the Daily Worker of February 5, 1942, and signed the call to the National Free Browder Congress, as shown in the Daily Worker of February 25, 1942, pages 1 and 4.

"A 1950 letterhead of the American Committee for Protection of Foreign Born carries the name of Dr. W. E. B. DuBois in a list of sponsors of that organization; the same information appears on an undated letterhead of the group, distributing a speech of Abner Green at the conference of December 2-3, 1950; a letterhead of the Midwest Committee for Protection of Foreign Born dated April 30, 1951, names him as a national sponsor of the organization. He signed the group's statement opposing the Hobbs bill (Daily Worker, July 25, 1950, p. 4); he signed their statement opposing denaturalization (Daily Worker of August 10, 1950, p. 5); and signed a telegram prepared and dispatched by the organization to the Attorney General of the United

States, protesting holding nine noncitizens without bail under the McCarran Act. (Daily Worker of November 24, 1952, p. 3.) He was also listed in the Daily Worker of October 21, 1954 (p. 2) as one of 95 sponsors of the National Conference to Defend the Rights of Foreign Born Americans, to be held December 11, through 12 in New York City by the American Committee for Protection of Foreign Born.

"The special committee cited the American Committee for Protection of Foreign Born as 'one of the oldest auxiliaries of the Communist Party in the United States' (report of March 29, 1944; also cited in report of June 25, 1942); the Attorney General cited the organization as subversive and Communist (press releases of June 1 and September 21, 1948; also redesignated pursuant to Executive Order 10450, see consolidated list of April 1, 1954).

"For years, the Communists have put forth the greatest efforts to capture the entire American Labor Party throughout New York State. They succeeded in capturing the Manhattan and Brooklyn sections of the American Labor Party but outside of New York City, they have been unable to win control' (Special Committee's Report 1311 of March 29, 1944). Dr. DuBois spoke at a State conference of the American Labor Party (Daily Worker of December 12, 1950, p. 5); he spoke at a dinner, April 18, opening the presidential campaign in New York City (Daily Worker of April 14, 1952, p. 8, an advertisement; and the Daily Worker of April 21, 1952, p. 1); he spoke at an election rally in Madison Square Garden, May 13; held under the auspices of the American Labor Party (Daily Worker of May 8, 1952, p. 8, and advertisement; and May 14, 1952, p. 1); and he spoke at an election rally in Madison Square Garden, October 27 (Daily Worker of October 22, 1952, p. 8, an advertisement; and October 29, 1952, p. 2).

"The Daily Worker of March 29, 1948 (p. 7), named Dr. DuBois as a member of the executive board and of the Policy Committee, Council on African Affairs, he signed the council's petition to the United Nations as shown in the Daily Worker of June 5, 1950 (p. 4); drafted their statement against the policy of the United States in Korea (Daily Worker of July 25, 1950, p. 3) and spoke at the council's conference on April 24 at Friendship Baptist Church in New York City (Daily Worker, April 23, 1954, p. 8 and April 26, 1954, p. 6). The Attorney General cited the Council on African Affairs as subversive and Communist (press releases of December 4, 1947, and September 21, 1948); also redesignated-consolidated list of April 1, 1954.

"The Attorney General cited the Jefferson School of Social Science as an 'adjunct of the Communist Party' (press release of Dec. 4, 1947); also redesignated-consolidated list of Apr. 1, 1954); the Special Committee reported that 'at the beginning of the present year, the old Communist Party Workers School and the School for Democracy were merged into the Jefferson School of Social Science.' (Report 1311 of Mar. 29, 1944.) Dr. DuBois was honored at the Jefferson School, as shown in the Daily Worker on Feb. 1, 1951 (p. 2); it was announced in the Daily Worker on Jan. 2, 1952 (p. 7), that Dr. DuBois was scheduled to conduct a seminar on 'Background of Africa Liberation Struggles' at the Jefferson School; the Jan. 26, 1952, issue of the same

publication (p. 7), named him as a faculty member of that school, as did the Worker, October 4, 1953 (p. 10) and the Daily Worker, Oct. 14, 1953 (p. 8)—advertisement. He signed statements on behalf of the Jefferson School as shown in the Daily Worker, Nov. 25, 1953 (p. 2) and the Daily People's World, July 6, 1954 (p. 7).

"In a report of the special committee, dated Mar. 29, 1944, the National Council of American-Soviet Friendship was cited as having been, in recent months, the Communist Party's principal front for all things Russian (report dated Mar. 29, 1944); the organization has been cited as subversive and Communist by the Attorney General (press releases of Dec. 4, 1947, and Sept. 21, 1948; also redesignated consolidated list of Apr. 1, 1954). Dr. DuBois signed a statement of the national council in 1947 (Daily Worker, Oct. 17, 1947, p. 4); he signed the organization's statement protesting the Iron Curtain, as reported in the Daily People's World on May 20, 1948 (p. 5); he signed a statement of the council, praising Henry Wallace's Open Letter to Stalin in May 1948 (from a pamphlet entitled 'How To End the Cold War and Build the Peace,' p. 9); he signed their statement calling for a conference with the Soviet Union (Daily Worker, June 21, 1948, p. 3); he signed their Roll Call for Peace (Daily Worker of Aug. 31, 1948, p. 5); he sent greetings through the national council on the 31st anniversary of the Russian Revolution (Daily Worker, Nov. 10, 1948, p. 11); he signed the council's appeal to the United States Government to end the cold war and arrange a conference with the Soviet Union (leaflet entitled 'End the Cold War—Get Together for Peace,' dated December 1948); he spoke at the Congress on American-Soviet Relations, Dec. 3-5, 1949, arranged by the national council and signed the council's letter to the American people, urging that a unified democratic Germany be established (Daily People's World, Aug. 13, 1952, pp. 4 and 6).

"A letterhead of the Conference on Peaceful Alternatives to the Atlantic Pact, dated Aug. 21, 1949, lists the name of Dr. W. E. B. DuBois as having signed an open letter of the organization, addressed to Senators and Congressmen, urging defeat of President Truman's arms program; he answered a questionnaire of the Committee for a Democratic Far Eastern Policy in favor of recognition of Chinese Communist Government, as shown in Far East Spotlight for December 1949-January 1950 (p. 23).

"The Conference for Peaceful Alternatives to the Atlantic Pact was cited as a meeting called by the Daily Worker in July 1949, to be held in Washington, D.C., and as having been instigated by 'Communists in the United States (who) did their part in the Moscow campaign' (Committee on Un-American Activities in Report 378 on the Communist Peace Offensive dated Apr. 1, 1951). The Committee for a Democratic Far Eastern Policy has been cited as Communist by the Attorney General (press release of Apr. 27, 1949); also redesignated-consolidated list of Apr. 1, 1954.

"A page of signatures from the Golden Book of American Friendship with the Soviet Union, 'sponsored by American friends of the Soviet Union, and signed by hundreds of thousands of Americans' was

published in the November 1937 issue of *Soviet Russia Today* (p. 79); the Golden Book was to be presented to President Kalinin at the 20th anniversary celebration. The page carried the title, 'I hereby inscribe my name in greeting to the people of the Soviet Union on the 20th anniversary of the establishment of the Soviet Republic,' and a facsimile of the name, W. E. B. DuBois, appeared on that page.

"The Golden Book of American Friendship was cited as a 'Communist enterprise' signed by 'hundreds of well-known Communists and fellow travelers' (Special Committee on Un-American Activities in Report 1311 of March 29, 1944).

"A letterhead of the New York Committee To Win the Peace, dated June 1, 1946, contains the name of W. E. B. DuBois in a list of New York committee members. The National Committee To Win the Peace, with which the New York committee is affiliated, was cited as subversive and Communist by the United States Attorney General. (Press releases of December 4, 1947, and September 21, 1948; also redesignated consolidated list of April 1, 1954.)

"Dr. DuBois sponsored a petition of the American Council for a Democratic Greece, as disclosed by the *Daily People's World* of August 23, 1948 (p. 2); he signed a statement of the same organization, condemning the Greek Government, as reported in the *Daily Worker* of September 2, 1948 (p. 7). The American Council for a Democratic Greece has been cited as subversive and Communist, an organization formerly known as the Greek-American Council (Attorney General of the United States in press releases of June 1 and September 21, 1948); also redesignated-consolidated list of April 1, 1954.

"Dr. DuBois was a sponsor of a conference of the National Council of Arts, Sciences and Professions, October 9-10, 1948, as shown in a leaflet entitled 'To Safeguard These Rights,' published by the Bureau of Academic Freedom of the National Council; a letterhead of the National Council (received for files January 1949) named him as a member-at-large of that organization; he was named as vice chairman of the group on the leaflet, Policy and Program Adopted by the National Convention, 1950; a letterhead of the same organization's southern California chapter, dated April 24, 1950, lists him as a member-at-large of the national council; he was elected vice chairman of the group in 1950 (*Daily Worker*, May 1, 1950, p. 12); a letterhead of the group dated July 28, 1950, names him as vice chairman of the group; he endorsed a conference on equal rights for Negroes in the arts, sciences, and professions sponsored by the New York Council of the Arts, Sciences, and Professions (*Daily Worker*, November 9, 1951, p. 7); the call to the conference contained the same information. A letterhead of the national council, dated December 7, 1952, named him as vice chairman.

"The call to a Scientific and Cultural Conference for World Peace, issued by the National Council of the Arts, Sciences, and Professions for New York City, March 25-27, 1949, as well as the conference program (p. 12), and the *Daily Worker* of February 21, 1949 (p. 9), named Dr. DuBois as one of the sponsors of that conference; he was a member of the program committee of the conference, honorary chair-

man of the panel at cultural and scientific conference (program, p. 7), and spoke on the Nature of Intellectual Freedom at that conference (p. 78 of the edited report of the conference entitled 'Speaking for Peace').

"The National Council of the Arts, Sciences, and Professions was cited as a Communist-front organization by the Committee on Un-American Activities in its review of the Scientific and Cultural Conference for World Peace, released April 19, 1949; in the same review, the Scientific and Cultural Conference was cited as a Communist front which 'was actually a supermobilization of the inveterate wheelhorses and supporters of the Communist Party and its auxiliary organizations.'

"The Daily People's World of October 28, 1947 (p. 4), named Dr. DuBois as one of the sponsors of a national conference of the Civil Rights Congress in Chicago, November 21-23, 1947; he sponsored their Freedom Crusade (Daily Worker, Dec. 15, 1948, p. 2); the call to a Bill of Rights Conference, called by the Civil Rights Congress, for July 16-17, 1949, in New York City, named him as one of the sponsors of that conference; the program of the National Civil Rights Legislative Conference, January 18-19, 1949, called by the Civil Rights Congress, lists him as one of the conference sponsors; he was chairman of a conference of the Congress, as reported in the Worker of January 2, 1949 (p. 5); Dr. DuBois was defended by the Civil Rights Congress (Daily Worker, Feb. 13, 1951, p. 3); he signed the organization's open letter to J. Howard McGrath, U.S. Attorney General, on behalf of the four jailed trustees of the bail fund of the Civil Rights Congress of New York (advertisement paid for by contributions of signers which appeared in the Evening Star on Oct. 30, 1951, p. A-7); he participated in the organization's sixth anniversary dinner in New York City, March 28, 1952 (Daily Worker, Mar. 28, 1952, p. 4).

"The Civil Rights Congress was formed in 1946 as a merger of two other Communist-front organizations, the International Labor Defense and the National Federation for Constitutional Liberties; it is 'dedicated not to the broader issues of civil liberties, but specifically to the defense of individual Communists and the Communist Party' and 'controlled by individuals who are either members of the Communist Party or openly loyal to it' (Rept. 1115 of the Committee on Un-American Activities, dated Sept. 2, 1947); the Attorney General cited the congress as subversive and Communist (press releases of Dec. 4, 1947 and Sept. 21, 1948); also redesignated-consolidated list of April 1, 1954.

"Dr. DuBois spoke in Washington, D.C., on May 9, 1947, under the auspices of the Washington Book Shop, as shown by a leaflet of the Book Shop, cited as subversive and Communist by the Attorney General; it had previously been cited by the Attorney General as follows: 'Evidence of Communist penetration or control is reflected in the following: Among its stock the establishment has offered prominently for sale books and literature identified with the Communist Party and certain of its affiliates and front organization' (press releases of Dec. 4, 1947, and Sept. 21, 1948; also redesignated-consolidated list of Apr. 1, 1954; and the CONGRESSIONAL RECORD of Sept. 24, 1942, p.

7688, respectively). The special committee cited the Washington Book Shop as a Communist-front organization (report of Mar. 29, 1944).

"The Workers Book Shop catalog for 1948 (p. 5), advertised Dr. DuBois' 'The World and Africa' for sale; the 1949-50 catalog (p. 11) advertised his 'Black Folk Then and Now,' the Worker for March 1, 1953 (p. 16), carried an advertisement of Dr. DuBois' books, 'The Battle for Peace' and 'Black Reconstruction' on sale at the Workers Book shop, New York City. The Workers Book Shops are a chain of Communist bookshops which are official outlets for Communist literature.

"As shown on the following sources, Dr. DuBois was a member of the advisory council of Soviet Russia Today: Letterhead of the publication dated September 8, 1947; a letterhead of September 30, 1947; and an undated letterhead received April 1948. The Daily People's World of November 6, 1952 (p. 7), reported that Dr. DuBois had written an article for the November issue of New World Review; and his article entitled 'Normal United States-China Relations' appeared in the issue of August 1954 (pp. 13-15). He was also shown by the Daily Worker of October 20, 1954 (p. 7), as one of those who attended the annual banquet held by New World Review on October 14 at which special tribute was paid to Mr. and Mrs. Paul Robeson. Soviet Russia Today has been cited as a Communist-front publication by the special committee in reports of March 29, 1944, and June 25, 1942; the Committee on Un-American Activities also cited it as a Communist-front publication in a report dated October 23, 1949. Soviet Russia Today changed its name to New World Review, effective with the March 1951 issue.

"The Daily Worker of July 6, 1951 (p. 7), reported that Dr. DuBois was author of the pamphlet, 'I Take My Stand for Peace,' published by the New Country Publishers, official Communist Party publishing house which has published the works of William Z. Foster and Eugene Dennis, Communist Party chairman and executive secretary, respectively. (Committee on Un-American Activities in its report of May 11, 1948.)

"In 1947 and 1948, Dr. DuBois was contributing editor on the staff of New Masses magazine and later, of Masses and Mainstream. (New Masses, July 22, 1947, p. 2; Masses and Mainstream, Mar. 1948, vol. 1, No. 1; and issue of August 1950, p. 1; June 1954, inside front cover.) He contributed articles to the following issues of New Masses and Masses and Mainstream-New Masses for September 10, 1946 (p. 3) and June 10, 1947 (p. 20); Masses and Mainstream for April 1951 (pp. 10-16); and February 1952 (pp. 8-14).

"In 1940, Dr. DuBois signed New Masses' letter to President Roosevelt as shown in New Masses for April 2, 1940 (p. 21); he was honored at a dinner in New York City, January 14, 1946, arranged by New Masses and at which awards were made for greater interracial understanding (Daily Worker of Jan. 7, 1946, p. 11, cols. 1 and 2); he endorsed New Masses, as reported in the Daily Worker of April 7, 1947 (p. 11); he sponsored a plea for financial support of New Masses, as disclosed in the issue of that publication for Apr. 8, 1947.

(p. 9); he received the New Masses award for his contribution in promoting democracy and interracial unity at the publication's second annual awards dinner (New Masses of Nov. 18, 1947, p. 7); the February 1953 issue of Masses and Mainstream carried a chapter from Dr. DuBois' book, 'The Soul of Black Folk,' written 50 years ago (Daily Worker, Feb. 23, 1953, p. 7); he was author of 'In Battle for Peace,' described as the story of his 83d birthday, and which was published by Masses and Mainstream (the Daily Worker of June 18, 1952, p. 7; Daily People's World of Sept. 17, 1952, p. 7; the Daily Worker of Sept. 23, 1952, p. 7; and the Worker of Dec. 21, 1952, p. 7).

"The Attorney General of the United States cited New Masses as a Communist periodical (CONGRESSIONAL RECORD, September 24, 1942, p. 7688); the special committee cited it as a nationally circulated weekly journal of the Communist Party (report of March 29, 1944; also cited in reports of January 3, 1939 and June 25, 1942.) Beginning with the March 1948 issue, New Masses and Mainstream (Marxist quarterly) consolidated into what is now known as Masses and Mainstream, with the announcement that here, proudly, in purpose even if not in identical form, is a magazine that combines and carries forward the 37-year-old tradition of New Masses and the more recent literary achievement of Mainstream. We have regrouped our energies, not to retire from the battle but to wage it with fresh resolution and confidence' (Masses and Mainstream for March 1948, p. 3).

"A letterhead of the Committee To Secure Justice in the Rosenberg case, dated March 15, 1952, carried the name of Dr. W. E. B. DuBois in a list of sponsors; he joined in a request of that committee for a new trial for Ethel and Julius Rosenberg (Daily Worker of June 2, 1952, p. 6); he participated in a rally October 23 in New York City, to demand clemency for the Rosenbergs (Daily Worker, Oct. 27, 1952, p. 8); he signed an amicus curiae brief presented to Supreme Court in Washington, D.C., urging a new trial for the Rosenbergs (Daily Worker of November 10, 1952, p. 3; and the Daily People's World of November 13, 1952, p. 8). He wrote an article entitled 'A Negro Leader's Plea To Save Rosenbergs' (The Worker of November 16, 1952, p. 3M); and the Daily Worker of January 21, 1953 (p. 7), reported that he had urged clemency for the Rosenbergs.

"The Daily Worker of April 11, 1949 (p. 5), reported that Dr. DuBois was a member of the Sponsoring Committee of the World Peace Congress in Paris; he was cochairman of the American Sponsoring Committee of the Congress, as disclosed on a leaflet entitled 'World Congress for Peace, Paris,' April 20-23, 1949, he was proposed as a candidate for the World Peace Prize, awarded by the World Peace Congress (Daily People's World of December 7, 1951, p. 4); he was a member of the Executive Committee of the World Peace Congress (Daily Worker of September 14, 1950, p. 5); he was one of the sponsors of the Second World Peace Congress in Sheffield, England (Daily Worker of October 19, 1950, p. 3); he was elected to the Presiding Committee of the World Peace Congress (Daily Worker of November 17, 1950, p. 1); he was a member of the World Peace Council of that

Congress (Daily Worker of November 24, 1950, p. 9); a mimeographed letter dated December 1, 1950, contains his name in a list of sponsors of the American Sponsoring Committee for Representation at the World Peace Congress.

"Dr. DuBois was a member of U.S. Sponsoring Committee of the American Intercontinental Peace Conference (Daily Worker of December 28, 1951, p. 2, and February 6, 1952, p. 2); the Peace Conference was called by the World Peace Council, formed at the conclusion of the Second World Peace Congress in Warsaw; he was awarded the International Peace Prize for "six world figures" by the World Peace Council (Daily People's World of January 29, 1953, p. 7); the Worker of February 8, 1953, p. 5; and Daily People's World, November 25, 1953, p. 4). He awarded the Stalin Peace Prize for 1953 to Howard Fast in ceremonies held in the Hotel McAlpin in April 1954. (See Daily Worker, April 26, 1954, pp. 3 and 6 and the Worker, May 9, 1954, p. 8.)

"The Daily Worker of June 20, 1950 (p. 2), reported that Dr. DuBois signed the World Peace Appeal; the same information appears on an undated leaflet of the enterprise, received by this committee September 11, 1950. A mimeographed list of individuals who signed the Stockholm World Appeal To Outlaw Atomic Weapons, received for filing October 23, 1950, contains the name of Dr. DuBois. He was Chairman of the Peace Information Center where the Stockholm peace petition was made available. (Daily Worker of May 25, 1950, p. 2; and August 16, 1950, p. 5.)

"The World Peace Congress which was held in Paris, France, April 20-23, 1949, was cited as a Communist front among the 'peace' conferences which 'have been organized under Communist initiative in various countries throughout the world as part of a campaign against the North Atlantic Defense pact' (Committee on Un-American Activities in reports of April 19, 1949; July 13, 1950; and April 1, 1951). The World Peace Council was formed at the conclusion of the Second World Peace Congress in Warsaw and was 'heralded by the Moscow radio as the expression of the determination of the peoples to take into their own hands the struggle for peace.' (Committee on Un-American Activities in a report dated April 1, 1951.)

"The World Peace Appeal was cited as a petition campaign launched by the Permanent Committee of the World Peace Congress at its meeting in Stockholm, March 16-19, 1950; it 'received the enthusiastic approval of every section of the international Communist hierarchy' and was lauded in the Communist press, putting every individual Communist on notice that he 'has the duty to rise to this appeal.'" (Committee on Un-American Activities in its report of April 1, 1951.)

"The American Peace Crusade, organized in January 1951, was cited as an organization which 'the Communists established as a new instrument for their "peace" offensive in the United States' (Committee on Un-American Activities in its reports of Feb. 19, 1951, and Apr. 1, 1951); Dr. DuBois was one of the sponsors of the crusade (Daily Worker of Feb. 1, 1951, p. 2); minutes of the sponsors meeting which was held in Washington, D.C., March 15, 1951 (p. 4), named him as

one of the initiators of the crusade and also as having been proposed as cochairman of that meeting; he was a sponsor of the American People's Congress and Exposition for Peace, which was held in Chicago, June 29-July 1, 1951, called by the American Peace Crusade to advance the theme of world peace (Daily Worker, Apr. 22, 1951, p. 2; May 1, 1951, p. 11; the American Peace Crusade, May 1951, pp. 1 and 4; the Daily Worker of May 9, 1951, p. 4; Daily Worker of June 11, 1951, p. 2; a leaflet of the congress; Daily Worker of July 1, 1951, p. 3; a leaflet entitled "An Invitation to American Labor To Participate in a Peace Congress"; the call to the American People's Congress; the Daily Worker of July 3, 1951, p. 2). He signed a petition of the crusade, calling on President Truman and Congress to seek a big-power pact (Daily Worker, Feb. 1, 1952, p. 1); he attended a meeting of Delegates Assembly for Peace, called by the crusade and held in Washington, D.C., April 1 (Daily Worker, Apr. 3, 1952, p. 3); he was one of the sponsors of a peace referendum jointly with the American Peace Crusade to make the end of the Korean war a major issue in the 1952 election campaign (Daily People's World of Aug. 25, 1952, p. 8).

"Dr. DuBois issued a statement on the death of Stalin which read in part as follows: 'Let all Negroes, Jews, and foreign born who have suffered in America from prejudice and intolerance remember Joseph Stalin' (Daily Worker of Mar. 9, 1953, p. 3); the Daily Worker of January 18, 1952 (p. 8), reported that he had renewed his fight for a passport in order to attend the American Intercontinental Peace Conference in Rio de Janeiro; it was reported in the Washington Evening Star on May 10, 1952 (p. B-21), that Dr. DuBois was refused admission to Canada to attend the Canadian Peace Congress because he refused to undergo an examination by the Canadian Immigration Service. On September 14, 1952, the Worker (p. M6) reported that Dr. DuBois had experienced passport difficulties when leaving the United States; and on May 4, 1953 (p. 2), the Daily Worker reported that U.S. Delegate Betty Sanders told the opening session of the Continental Cultural Congress in Santiago, Chile, that DuBois would have attended in person 'as well as in spirit,' if he had not been denied a passport."

According to Webster's New Collegiate Dictionary, "subversion" means "act of subverting, or a state of being subverted; overthrow; utter ruin; destruction. That which subverts."

The time element would prevent my reading all of these citations on the various individuals who compose the high echelon of this organization. I will, however, read excerpts from some of them and would like to ask later for permission to incorporate each of them in full in the RECORD.

"OCTOBER 13, 1955.

"SUBJECT: ARTHUR B. SPINGARN, national president, member of board of directors, NAACP, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"Arthur B. Spingarn is listed as an individual participating in the Conference on Africa, held by the Council on African Affairs in New York City, April 14, 1944, according to the Council's pamphlet, for a New Africa (p. 37).

"The Attorney General of the United States cited the Council on African Affairs as subversive and Communist in letters to the Loyalty Review Board, released December 4, 1947, and September 21, 1948. The Attorney General redesignated the organization April 27, 1953, pursuant to Executive Order No. 10450, and included it on the April 1, 1954, consolidated list of organizations previously designated.

"An undated leaflet, 'The Only Sound Policy for a Democracy' and the Daily Worker of March 18, 1945 (p. 2), listed Arthur Spingarn, president NAACP, New York, N.Y., as one who signed a statement of the National Federation for Constitutional Liberties supporting the War Department's order on granting commissions * * * to members of the Armed Forces who have been members of or sympathetic to the views of the Communist Party. An advertisement in the New York Times, April 1, 1946 (p. 16), listed Arthur B. Spingarn as a signer of a statement of the National Federation for Constitutional Liberties opposing use of injunctions in labor disputes.

"The Attorney General cited the National Federation for Constitutional Liberties as subversive and Communist in letters released December 4, 1947, and September 21, 1948; redesignated April 27, 1953, and included on the April 1, 1954, consolidated list. The group was cited previously by the Attorney General as part of what Lenin called the solar system of organizations, ostensibly having no connection with the Communist Party, by which Communists attempt to create sympathizers and supporters of their program. (CONGRESSIONAL RECORD, September 24, 1942, p. 7687.) The special Committee on Un-American Activities, in its report of March 29, 1944 (p. 50), cited the National Federation as 'one of the viciously subversive organizations of the Communist Party.' The Committee on Un-American Activities, in its report of September 2, 1947 (p. 3), cited the National Federation * * * as among a 'maze of organizations' which were 'spawned for the alleged purpose of defending civil liberties in general but actually intended to protect Communist subversion from any penalties under the law.'

"An undated letterhead of the Public Use of Arts Committee listed Arthur B. Spingarn as a sponsor of the organization. The Special Committee on Un-American Activities, in its report of March 29, 1944 (p. 112), cited the Public Use of Arts Committee as a Communist front which was organized by the Communist-controlled Artists Union."

"FEBRUARY 13, 1956.

"SUBJECT: GRACE B. FENDERSON, national vice president, NAACP, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"The pamphlet, 'For a New Africa' (p. 37), proceedings of the Conference on Africa held under auspices of the Council on African Affairs, April 14, 1944, named Mrs. Grace B. Fenderson as a conference participant.

"The Attorney General of the United States cited the Council on African Affairs as subversive and Communist in letters to the Loyalty

Review Board, released December 4, 1947, and September 21, 1948; redesignated April 27, 1953, pursuant to Executive Order No. 10450, and included on the April 1, 1954, consolidated list of organizations previously designated.

"FEBRUARY 13, 1956.

"SUBJECT: A. PHILIP RANDOLPH, national vice president, NAACP, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"The Daily Worker of September 12, 1950 (p. 2), reported that A. Philip Randolph, president, AFL Brotherhood of Sleeping Car Porters, opposed the jailing of the Communist leaders.

"The Attorney General of the United States reported that A. Philip Randolph, president of the National Negro Congress, refused to run in April 1940 'on the ground that it was "deliberately packed with Communists and Congress of Industrial Organizations members who were either Communists or sympathizers with Communists"' (CONGRESSIONAL RECORD, Sept. 24, 1942, pp. 7687 and 7688).

"Walter S. Steele, in testimony in public hearings, Committee on Un-American Activities, July 21, 1947 (p. 92), referred to A. Philip Randolph as follows:

"A. Philip Randolph, one-time president of the National Negro Congress, resigned his position because of the Communist control thereof. At the time of his resignation, at a meeting held in Washington, D.C., he charged that the congress was controlled by the Communist Party, through which he found it was chiefly financed."

"George K. Hunton, testified in public hearings, Committee on Un-American Activities, July 13, 1949 (p. 451), concerning the Communist infiltration of the National Negro Congress with reference to A. Philip Randolph as follows:

"In the National Negro Congress they did make progress. That was a sound, constructive organization started about 10 years ago. It was a good organization, with a sound, constructive program, and the Commies moved in, and within a year and a half the white Communist members completely out-numbered the Negro members and took over. Be it said to his credit that the then president, A. Philip Randolph, roundly denounced them and then resigned, and said no longer would the National Negro Congress represent the feeling of the Negro people who organized it * * *"

"Manning Johnson testified in public hearings, Committee on Un-American Activities, July 14, 1949, as follows concerning the National Negro Congress and A. Philip Randolph:

"Mr. TAVENNER. What was the relationship of the commission (Negro Commission of the Communist Party) to the American Negro Labor Congress, the League of Struggle for Negro Rights, and the National Negro Congress?"

"Mr. JOHNSON. The Negro League was formed by the Communist

Party, and its program was identical with the program of the Communist Party for the Negro.

"The majority of members of the American Negro Labor Congress were Communists or fellow-travelers. It was a very narrow, sectarian organization, and the party decided to change its name and broaden its activities, so the name was changed to the League of Struggle for Negro Rights. . . .

"The League of Struggle for Negro Rights was never successful in penetrating any broad sections of the Negro people. It remained a very narrow and sectarian organization. So the party, after having received the open letter, which was really drawn in Moscow and called for breaking away from narrow organizations, in line with this open letter, at a meeting of the national committee which, as I recall, was in the latter part of 1934 or early part of 1935, we discussed the general situation among Negroes, and the conclusion was that there was considerable unrest among them and that the time was historically right for the formation of a broad and all-inclusive organization.

"As a result of that discussion and that conclusion, the national committee of the party, upon the recommendation of one of the members of the Negro commission present at that meeting, decided to set up the National Negro Congress. The national committee gave James W. Ford the responsibility, along with the Negro commission of the national committee, to form that congress.

"We were fishing around for someone to head the congress, and we found there was no finer person to get who was not a member of the party than A. Philip Randolph. He was approached and agreed.

"The third—and fatal—National Negro Congress was held in Washington, D.C. The Communists had become so drunk with power, and they felt they had such strong control over the congress, that they thought they could walk roughshod over the liberals, and they antagonized A. Philip Randolph and he began to fight James W. Ford and others.

"James W. Ford and others insisted I fight A. Philip Randolph, and I refused to do so, and at that time I predicted they were on the road to breaking up the congress.

"The fight widened to such an extent that Randolph began to speak openly against Communist domination. I used to wonder how Randolph could be so naive as to not know it was a Communist-front organization.

"Before the third congress met, we got wind that Randolph was going to resign. We had Communists go to that congress representing various paper organizations so as to give them control in voting.

"When Randolph saw the congress was packed with Communists, Randolph resigned and walked out . . . (Pp. 510—512.)

"A. Philip Randolph supported a statement to Congress issued by the American League Against War and Fascism against neutrality measures as reported by the Daily Worker of February 27, 1937 (p. 2). The Daily Worker of April 22, 1938 (p. 2), reported that A. Philip Randolph was one of the signers of a letter urging open hearings on

the neutrality act which was sent to Congress under auspices of the American League for Peace and Democracy. A. Philip Randolph was nominated as a member of the National Labor Committee of the American League for Peace and Democracy held in Washington, D.C., January 6-8, 1939, as shown by the pamphlet, "7½ Million . . ." (p. 32). Letterheads of the China Aid Council of the American League for Peace and Democracy dated May 18, 1938; and June 11, 1938, name him as a sponsor of the council. He was a sponsor of the Easter drive of the China Aid Council of the American League . . . , as shown by the Daily Worker of April 8, 1938 (p. 2). A photostatic copy of a letterhead of the American League for Peace and Democracy dated April 6, 1939, listed A. Philip Randolph as a national sponsor of that organization.

"The Attorney General of the United States cited the American League Against War and Fascism as subversive and Communist, in letters to the Loyalty Review Board, released December 4, 1947 and September 21, 1948. The organization was redesignated by the Attorney General April 27, 1953, pursuant to Executive Order No. 10450, and included it on the April 1, 1954, consolidated list of organizations previously designated. The organization was cited previously by the Attorney General as a Communist-front organization (in re Harry Bridges, May 28, 1942, p. 10). The Special Committee on Un-American Activities, in its report dated March 29, 1944 (p. 53), cited the American League Against War and Fascism as 'organized at the First U.S. Congress Against War which was held in New York City, September 29 to October 1, 1933. Four years later at Pittsburgh, November 26-28, 1937, the name of the organization was changed to the American League for Peace and Democracy. . . . It remained as completely under the control of Communists when the name was changed as it had been before.'

"The Attorney General cited the American League for Peace and Democracy as subversive and Communist in letters released June 1 and September 21, 1948; redesignated April 27, 1953, and included on the April 1, 1954, consolidated list. The Attorney General cited the group previously as established in the United States in 1937 as successor to the American League Against War and Fascism 'in an effort to create public sentiment on behalf of a foreign policy adapted to the interests of the Soviet Union . . . The American League for Peace and Democracy . . . was designed to conceal Communist control, in accordance with the new tactics of the Communist International' (CONGRESSIONAL RECORD, Sept. 24, 1942, pp. 7683 and 7684). The special Committee on Un-American Activities in its report of January 3, 1939 (pp. 69-71), cited the American League for Peace and Democracy as 'the largest of the Communist-front movements in the United States.'

"A letterhead of the organization, Commonwealth College, dated January 1, 1940, listed A. Philip Randolph as a member of the National Advisory Committee. He endorsed the reorganization plan of Commonwealth College, as shown by the August 15, 1937, issue of Fortnightly, a publication of the college (p. 3).

"The special Committee on Un-American Activities cited Commonwealth College as a Communist enterprise in its report of March 29, 1944 (pp. 76 and 167). The Attorney General cited the Commonwealth College as Communist in a letter released April 27, 1949; redesignated April 27, 1953, and included on the April 1, 1954, consolidated list.

"An undated leaflet of the League for Mutual Aid listed A. Philip Randolph as a member of the executive committee of that organization. He was a guest of honor at the 17th annual dinner of the League for Mutual Aid held February 1, 1937, as shown by New Masses, January 28, 1937 (p. 37).

"The League for Mutual Aid was cited as a Communist enterprise by the special Committee on Un-American Activities in its report of March 29, 1944 (p. 76).

"A. Philip Randolph was a sponsor of the Medical Bureau and North American Committee To Aid Spanish Democracy, as shown by letterheads of the organization dated July 8, 1938, and February 2, 1939. The Daily Worker of June 2, 1938 (p. 5), reported that A. Philip Randolph was a supporter of a meeting of the Medical Bureau * * *.

"In 1937-38, the Communist Party threw itself wholeheartedly into the campaign for, in support of the Spanish Loyalist cause, recruiting men and organizing multifarious so-called relief organizations. Among these was the Medical Bureau and North American Committee To Aid Spanish Democracy. (Special Committee on Un-American Activities, report Mar. 29, 1944, p. 82.)

"New Masses for October 26, 1937 (p. 11), reported that A. Philip Randolph was chairman of the National Negro Congress. A. Philip Randolph was president of the National Negro Congress, as shown by the Daily Worker of January 1, 1938 (p. 4), January 13, 1938 (p. 3), April 19, 1938 (p. 3), and the pamphlet, Second National Negro Congress, October 1937. He was president of the Third National Negro Congress, as reported by the June 1940 issue of the Communist (p. 548). The official proceedings of the 1836 National Negro Congress (p. 41), listed A. Philip Randolph as a member of the national executive council of the organization. He spoke at a gathering of the congress, as reported by the Daily Worker of March 8, 1938 (p. 3). The Daily Worker of February 15, 1938 (p. 7), reported that A. Philip Randolph contributed to the official proceedings of the Second National Negro Congress.

"The Attorney General cited the National Negro Congress as subversive and Communist in letters released December 4, 1947, and September 21, 1948; redesignated April 27, 1953, and included on the April 1, 1954, consolidated list. The organization was cited previously by the Attorney General as a Communist-front group (CONGRESSIONAL RECORD, Sept. 24, 1942, pp. 7687 and 7688). The special Committee on Un-American Activities, in its report of January 3, 1939 (p. 81), cited the National Negro Congress as 'the Communist-front movement in the United States among Negroes * * *.

"A. Philip Randolph was a consultant of the Panel on Citizenship and Civil Liberties of the Southern Conference for Human Welfare, as

shown by an official report of the organization, dated April 19-21, 1942. The call to the second conference, Southern Conference for Human Welfare, April 14-16, 1940, listed A. Philip Randolph as a sponsor of that conference.

"The special Committee on Un-American Activities, in its report of March 29, 1944 (p. 147), cited the Southern Conference for Human Welfare as a Communist front which received money from the Robert Marshall Foundation, one of the principal sources of funds by which many Communist fronts operate. The Committee on Un-American Activities, in its report of June 12, 1947, cited the Southern Conference for Human Welfare as a Communist-front organization 'which seeks to attract southern liberals on the basis of its seeming interest in the problems of the South' although its 'professed interest in southern welfare is simply an expedient for larger aims serving the Soviet Union and its subservient Communist Party in the United States.'

"The Daily Worker, issues of March 28, 1938 (p. 3) and April 4, 1938 (p. 3), listed A. Philip Randolph as a sponsor of the World Youth Congress. The special Committee on Un-American Activities, in its report of March 29, 1944 (p. 183), cited the World Youth Congress as a Communist conference held in the summer of 1938 at Vassar College.

"A. Philip Randolph signed a petition of the American Friends of Spanish Democracy to lift the arms embargo as shown by the Daily Worker of April 8, 1938 (p. 4). The special Committee on Un-American Activities, in its report of March 29, 1944 (p. 82), cited the American Friends of Spanish Democracy as follows: 'In 1937-38, the Communist Party threw itself wholeheartedly into the campaign for the support of the Spanish Loyalist cause, recruiting men and organizing multifarious so-called relief organizations * * * such as * * * American Friends of Spanish Democracy.'

"A. Philip Randolph is listed as a sponsor on a letterhead of the American Relief Ship for Spain dated September 3, 1938. The American Relief Ship for Spain was cited as 'one of the several Communist Party front enterprises which raised funds for Loyalist Spain (or rather raised funds for the Communist end of that civil war).' (Special Committee on Un-American Activities Report, Mar. 29, 1944, p. 102.)

"The proceedings of the Congress of Youth of the American Youth Congress, July 1-5, 1939 (p. 3), listed A. Philip Randolph as a signer of the call to the congress.

"A. Philip Randolph was a sponsor of the Conference on Pan-American Democracy (letterhead, Nov. 18, 1938). The booklet, *These Americans Say*, published by the Coordinating Committee To Lift the Embargo, named him as a representative individual. He was a sponsor of the Greater New York Emergency Conference on Inalienable Rights (program of conference, Feb. 12, 1940).

"The Conference on Pan-American Democracy (known also as Council for Pan-American Democracy) was cited as subversive and Communist by the Attorney General in letters released June 1 and September 21, 1948; redesignated April 27, 1953, pursuant to Executive Order No. 10450. The special Committee on Un-American Activities,

in its report of March 29, 1944 (pp. 161 and 164), cited the organization as a Communist front which defended Carlos Luiz Prestes, a Brazilian Communist leader and former member of the executive committee of the Communist International.

"The special Committee on Un-American Activities, in its report of March 29, 1944 (pp. 137 and 138), cited the Coordinating Committee To Lift the (Spanish) Embargo as one of a number of front organizations set up during the Spanish civil war by the Communist Party in the United States and through which the party carried on a great deal of agitation.

"The Greater New York Emergency Conference on Inalienable Rights was cited as a Communist front which was succeeded by the National Federation for Constitutional Liberties (special committee report, Mar. 29, 1944, pp. 96 and 129). The Committee on Un-American Activities, in its report of September 2, 1947 (p. 3), cited the Greater New York Emergency Conference on Inalienable Rights among a 'maze of organizations' which were 'spawned for the alleged purpose of defending civil liberties in general, but actually intended to protect Communist subversion from any penalties under the law.'

"A. Philip Randolph was a sponsor of the Spanish Refugee Relief Campaign, as shown by the back cover of a pamphlet, Children in Concentration Camps. He signed the call to a United May Day conference, according to the Daily Worker of March 17, 1937 (p. 4). An undated letterhead of the United May Day Committee listed him as chairman.

"The special Committee on Un-American Activities cited the Spanish Refugee Campaign as a Communist-front organization (report, Jan. 3, 1940, p. 9).

"The United May Day conference was cited as 'engineered by the Communist Party for its 1937 May Day demonstrations' and also organized by the party in 1938 (special committee report, Mar. 29, 1944, pp. 124 and 139).

"The Attorney General cited the United May Day Committee as subversive and among the affiliates and committees of the Communist Party, U.S.A., which seeks 'to alter the form of government of the United States by unconstitutional means.' (Letter released December 4, 1947; redesignated April 27, 1953, and included on the April 1, 1954, consolidated list.)

"The Daily Worker of January 23, 1937 (p. 3), announced that A. Philip Randolph was scheduled to speak at the Southern Negro Youth Congress, Richmond, Va., February 12-14. 'The People Versus H.C.L.' listed him as a sponsor of the Consumers National Federation. He was shown as a sponsor of the Public Use of Arts Committee on an undated letterhead of that organization.

"The Southern Negro Youth Congress was cited as subversive and among the affiliates and committees of the Communist Party U.S.A., which seeks to alter the form of government of the United States by unconstitutional means. (Attorney General, letter released December 4, 1947; redesignated April 27, 1953, and included on April 1, 1954, consolidated list.) The special Committee on Un-American Activities,

in its report of January 3, 1940 (p. 9), cited the Southern Negro Youth Congress as a Communist-front organization. The Committee on Un-American Activities, in its report of April 17, 1947 (p. 14), cited the Southern Negro Youth Congress as 'surreptitiously controlled' by the Young Communist League.

"The Consumers National Federation was cited as a Communist-front group by the special committee in its report of March 29, 1944 (p. 155).

"Public Use of the Arts Committee was cited as a Communist front by the special committee in its report of March 29, 1944 (p. 112)."

"FEBRUARY 13, 1956.

"SUBJECT: L. PEARL MITCHELL, national vice president, NAACP, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"The Daily Worker of April 18, 1936 (p. 3), named L. Pearl Mitchell, identified as national director of the National Association for the Advancement of Colored People, as chairman of a committee for a benefit dance which was held by the Joint Scottsboro Defense Committee, Cleveland, Ohio, for the purpose of raising money to be sent to New York.

"The Scottsboro Defense Committee was cited as a Communist front by the special Committee on Un-American Activities in its reports of January 3, 1939 (p. 82); and March 29, 1944 (p. 177).

"Miss L. Pearl Mitchell, of Cleveland, Ohio, was one of the endorsers of the National Negro Congress, as shown by the call for National Negro Congress, Chicago, Ill., February 14, 1936.

"The National Negro Congress was cited as subversive and Communist by the Attorney General of the United States in letters to the Loyalty Review Board, released December 4, 1947, and September 21, 1948; also included in the Attorney General's consolidated list of April 1, 1954.

"The special Committee on Un-American Activities stated that 'the officers of the National Negro Congress are outspoken Communist sympathizers, and a majority of those on the executive board are outright Communists' (special Committee on Un-American Activities, report, January 3, 1939, p. 81; also cited, reports, January 3, 1940, p. 9; June 25, 1942, p. 20; March 29, 1944, p. 180; and included in the Attorney General's consolidated list of April 1, 1954)."

"FEBRUARY 13, 1956.

"SUBJECT: BISHOP W. J. WALLS, national vice president, NAACP, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"As shown in Soviet Russia Today for December 1942 (p. 42), W. J. Walls was a sponsor of the Congress of American-Soviet Friendship. He was named as a sponsor of the National Council of American-

Soviet Friendship on a letterhead of the group dated March 13, 1946, and a memorandum issued by the organization March 18, 1946.

"The National Council of American-Soviet Friendship was cited as subversive and Communist by the Attorney General of the United States (press releases of December 4, 1947, and September 21, 1948; also included on consolidated list of April 1, 1954); the special Committee on Un-American Activities cited the National Council * * * (in a report dated March 29, 1944) as having been 'in recent months, the principal front' of the Communist Party.

"Bishop W. J. Walls, Chicago, Ill. supported the National Negro Congress, as shown in the Daily Worker of February 3, 1936 (p. 2). The National Negro Congress was cited as subversive and Communist by the Attorney General of the United States (press releases of December 4, 1947, and September 21, 1948; also included on consolidated list of April 1, 1954); the Attorney General had previously cited the National Negro Congress as 'sponsored and supported by the Communist Party' (CONGRESSIONAL RECORD, Sept. 24, 1942, pp. 7687-7688). The Special Committee cited the National Negro Congress as 'the Communist-front movement in the United States among Negroes' (report of January 3, 1939; also cited in reports of January 3, 1940; January 3, 1941; June 25, 1942; and March 29, 1944).

"A petition to the United Nations, drafted and circulated by the Council on African Affairs, contained the signature of Bishop W. J. Walls, according to the Daily Worker of June 5, 1950 (p. 4). The Attorney General cited the council as subversive and Communist (press releases of December 4, 1947, and September 21, 1948; also consolidated list of April 1, 1954).

"Bishop Walls also signed a statement of the National Committee To Defeat the Mundt (anti-Communist) Bill, according to the Daily Worker of April 3, 1950 (p. 4). The national committee * * * was cited by the Committee on Un-American Activities as 'a registered lobbying organization which has carried out the objectives of the Communist Party in its fight against antsubversive legislation' (report of the Committee on Un-American Activities on the National Committee To Defeat the Mundt Bill, released December 7, 1950).

"Identified as secretary of the board of bishops, A.M.E. Zion Church, Bishop W. J. Walls was named as having endorsed the World Peace Appeal (undated leaflet received by the committee September 11, 1950), and the Daily Worker of August 14, 1950 (p. 2). The World Peace Appeal was cited as a petition campaign launched by the Permanent Committee of the World Peace Congress at its meeting in Stockholm, March 16-19, 1950; as having 'received the enthusiastic approval of every section of the international Communist hierarchy'; as having been lauded in the Communist press, putting 'every individual Communist on notice that he "has the duty to raise to this appeal"; and as having 'received the official endorsement of the Supreme Soviet of the U.S.S.R. * * * (report of the Committee on Un-American Activities on the Communist Peace Offensive, April 1, 1951).

"Bishop Walls was one of the sponsors of the American Sponsoring Committee for Representation at the World Peace Congress, as shown

on a mimeographed letter of December 1, 1950; he was a delegate to the World Peace Congress, as shown in the Daily Worker of November 7, 1950 (p. 2); he signed a protest made by the American Sponsoring Committee for Representation at the World Peace Congress (Daily People's World of Nov. 20, 1950, p. 2). The protest was made against exclusion by the British Government of more than 50 Americans, five-sixths of the U.S. delegation to the World Peace Congress. In the latter two sources, he was identified as secretary of the board of bishops of A.M.E. Zion Church.

"The World Peace Congress was cited as a Communist front among the 'peace conferences' which 'have been organized under Communist initiative in various countries throughout the world as part of a campaign against the North Atlantic Defense Pact' (report of the Committee on Un-American Activities dated April 1, 1951).

"According to the Daily Worker of October 28, 1949 (p. 2), Bishop W. J. Walls, of Chicago, endorsed Benjamin J. Davis, Jr., Communist, and urged his reelection to the New York City Council. Benjamin J. Davis was 1 of the 11 leaders of the Communist Party on trial."

"FEBRUARY 13, 1956."

"SUBJECT: JOHN HAYNES HOLMES, national vice president, NAACP, 1954-61.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"Rev. John Haynes Holmes was shown to be a member of the advisory board of the American Committee for Protection of Foreign Born on a letterhead of the organization dated April 27, 1938, on a letterhead dated January 1940, and in the call to the third annual conference. The American Committee for Protection of Foreign Born was cited as subversive and Communist by the Attorney General of the United States (letters to Loyalty Review Board, released June 1 and September 21, 1948; also included in consolidated list released April 1, 1954). The special Committee on Un-American Activities cited the organization as "one of the oldest auxiliaries of the Communist Party in the United States" (report, March 29, 1944, p. 155; also cited in report, June 25, 1942, p. 13).

"In a bulletin, Spot News (p. 1), John Haynes Holmes was listed as a sponsor of the American Committee to Save Refugees, which was cited as a Communist front by the Special Committee on Un-American Activities, report, March 29, 1944 (pps. 49, 112, 129, 133, 138, 167, 180).

"A letterhead dated November 18, 1936, showed John Haynes Holmes to be a member of the general committee of the medical bureau, American Friends of Spanish Democracy. 'New Masses' (January 5, 1937, p. 31) also listed John Haynes Holmes as a member of the general committee of that organization. In 1937-38, the Communist Party threw itself wholeheartedly into the campaign for the support of the Spanish Loyalist cause, recruiting men and organizing multifarious so-called relief organizations * * * such as * * * American

Friends of Spanish Democracy' (special committee on Un-American Activities, report, March 29, 1944, p. 82).

"The Daily Worker (January 11, 1937, p. 2) reported that John Haynes Holmes was a sponsor of the New York City Conference Against War and Fascism. The Daily Worker (February 23, 1938, p. 2) reported that he signed a letter which was sponsored by the American League for Peace and Democracy. A contribution from him appeared in Fight (September 1935, p. 2), a magazine published by the American League Against War and Fascism; he was identified as minister, Community Church, New York. The following is quoted from an editorial comment on the article:

"In a recent sermon Dr. Holmes made an eloquent appeal for unity of Christians and Communists in opposition to the forces of reaction driving toward war and fascism, and in struggle for the achievement of a better world based on brotherhood and cooperation among men.

"If churchmen will unite with Communists, Socialists, trade unionists, and everyone else opposed to war and fascism, our forces will be tremendously strengthened, and war and fascism will not be inevitable. Already the American League Against War and Fascism has brought together in its ranks people of diverse political and religious beliefs, liberals, radicals, and revolutionists, of all races and creeds * * *.

"The American League Against War and Fascism was organized at the First United States Congress Against War which was held in New York City, September 28 to October 1, 1933. Four years later at Pittsburgh, November 26-28, 1937, the name of the organization was changed to the American League for Peace and Democracy. There was, however, no fundamental change in the character of the organization. It remained as completely under the control of Communists when the name was changed as it had been before' (special committee report, Mar. 29, 1944, p. 53; also cited in reports, Jan. 3, 1939, pp. 69 and 121; Jan. 3, 1940, p. 10; June 25, 1942, p. 14). The Attorney General of the United States cited the league as subversive and Communist (letters to Loyalty Review Board, released Dec. 4, 1947, and Sept. 21, 1948; also included in consolidated list released Apr. 1, 1954). The Attorney General cited it as a 'Communist-front Organization, in re Harry Bridges, May 28, 1942 (p. 10) and said it was 'established in the United States in an effort to create public sentiment on behalf of a foreign policy adapted to the interests of the Soviet Union' (CONGRESSIONAL RECORD, Sept. 24, 1942, p. 7683).

"The Daily Worker (Sept. 24, 1940, p. 5) reported that an open letter sponsored by the Communist Party and the American Civil Liberties Union, demanding discharge of Communist Party defendants in Fulton and Livingston Counties, was signed by John Haynes Holmes.

"The Daily Worker of February 13, 1937 (p. 2), reported that 'aroused by the Fascist tactics displayed by the Brazilian Government in its treatment of hundreds of political prisoners held without trial since November 1935, outstanding among them Luiz Carlos Prestes, leader of the liberation movement of the Brazilian people, and Arthur Ewert, ex-deputy in the German Reichstag, outstanding Americans have

signed their names to a cable of protest forwarded to President Vargas of Brazil. Among those named as signers was Dr. John Hayes Holmes, Community Church. A letterhead dated November 16, 1938, of the conference on Pan American Democracy, listed John Haynes Holmes as a sponsor. The Attorney General cited this organization as subversive and Communist (letters to Loyalty Review Board, released June 1 and Sept. 21, 1948; also included in consolidated list released Apr. 1, 1954). The special Committee on Un-American Activities cited the organization as a Communist front which defended Carlos Luiz Prestes, a Brazilian Communist leader and former member of the executive committee of the Communist International (report, Mar. 29, 1944, pp. 161 and 164; also cited in report, June 25, 1942, p. 18).

"The Daily Worker of February 13, 1939 (p. 2), reported that Dr. John Haynes Holmes was a member of the Descendants of the American Revolution. The Daily Worker (Jan. 21, 1938, p. 2), also referred to him as a sponsor and as a member of the advisory board of that organization. A pamphlet, Descendants of the American Revolution (back page), listed him as a member of the advisory board of the organization. The special committee (report, June 25, 1942, pp. 18 and 19) cited the Descendants of the American Revolution as 'a Communist-front organization set up as a radical imitation of the Daughters of the American Revolution. The descendants have uniformly adhered to the line of the Communist Party. * * * The educational director * * * is one Howard Solzam, an instructor at the Communist Party's Workers School in New York.'

"A program of the conference (February 12, 1940), named John Haynes Holmes as a sponsor of the Greater New York Emergency Conference on Inalienable Rights. This conference was cited by the special Committee on Un-American Activities as a Communist front which was succeeded by the National Federation for Constitutional Liberties (report, March 29, 1944, pp. 96 and 129). It was also cited by the congressional Committee on Un-American Activities (report No. 1115, September 2, 1947, p. 3).

"An open letter to the U. S. Senate, initiated and distributed by the National Emergency Conference for Democratic Rights, in protest of the Dempsey deportation bill and the McCormack rider attached to the Walter espionage bill, was signed by the Reverend John Haynes Holmes (photostat of open letter). 'It will be remembered that during the days of the infamous Soviet-Nazi Pact, the Communists built protective organizations known as the National Emergency Conference, the National Emergency Conference for Democratic Rights, which culminated in the National Federation for Constitutional Liberties' (Committee on Un-American Activities, report No. 1115, September 2, 1947, p. 12). The special committee cited the National Emergency Conference * * * as a Communist front in the report of March 29, 1944 (pp. 48 and 102).

"The Daily Worker of February 8, 1939 (p. 7), reported that John Haynes Holmes was contributor to a booklet published by the League of American Writers. The league was cited as a Communist-front organization in three reports of the special committee (report, January

3, 1940, p. 9; June 25, 1942, p. 19; March 29, 1944, p. 48). It was cited as subversive and Communist by the Attorney General (letters to Loyalty Review Board, released June 1, and September 21, 1948; also included in consolidated list released April 1, 1954). Previously, the Attorney General (CONGRESSIONAL RECORD, September 24, 1942, pp. 7685 and 7686) stated that the overt activities of the league leave little doubt of its Communist control.

"An undated letterhead listed John Haynes Holmes as sponsor of the New York Tom Mooney Committee, which was cited as a Communist front by the special committee (report, March 29, 1944, p. 154).

"An undated leaflet published by the Citizens' Committee to Free Earl Browder named Dr. John Haynes Holmes, Community Church, New York City, among those who appealed to President Roosevelt for justice in the Browder case. The Citizens' Committee to Free Earl Browder was cited as Communist by the U.S. Attorney General (CONGRESSIONAL RECORD, September 24, 1942, p. 7687; letter to Loyalty Review Board, released April 27, 1949; also included in consolidated list released April 1, 1954). 'When Earl Browder (then general secretary, Communist Party) was in Atlanta Penitentiary serving a sentence involving his fraudulent passports, the Communist Party's front which agitated for his release was known as the Citizens' Committee to Free Earl Browder * * * (special committee report, March 29, 1944).

"Soviet Russia Today for December 1933 (p. 17) listed John Haynes Holmes among the endorsers of the National Committee, Friends of the Soviet Union. A pamphlet issued by the Friends of the Soviet Union entitled 'Welcome. "Land of Soviets" Moscow-New York 1929' listed John Haynes Holmes as a member of the Reception Committee for the Soviet Flyers. The Attorney General cited Friends of the Soviet Union as Communist (letters to Loyalty Review Board, released December 4, 1947, June 1 and September 21, 1948; also included in consolidated list released April 1, 1954). The special committee cited it as 'one of the most open Communist fronts in the United States' whose purpose 'is to propagandize for and defend Russia and its system of government' (report, January 3, 1939, p. 78).

"Rev. John Haynes Holmes, New York, N.Y., was shown to be a sponsor of the Mid-Century Conference for Peace on the call to that conference. The conference was cited by this committee at a meeting held in Chicago, May 29 and 30, 1950, by the Committee for Peaceful Alternatives to the Atlantic Pact and as having been 'aimed at assembling as many gullible persons as possible under Communist direction and turning them into a vast sounding board for Communist propaganda' (report 378, April 25, 1961, p. 58).

"A letterhead dated March 16, 1937, listed John Haynes Holmes as a member of the National People's Committee Against Hearst, cited by the special Committee on Un-American Activities as a subsidiary organization of the American League for Peace and Democracy, which was described on page 2 of this report (report, June 25, 1942, p. 16).

"A letterhead dated March 20, 1928, listed Rev. John Haynes Holmes as a member of the advisory board of Russian Reconstruction Farms, Inc., cited by the special committee as a Communist enterprise which

was directed by Harold Ware, son of the well-known Communist Ella Reeve Bloor (report, March 29, 1944, p. 76).

"New Masses for March 31, 1938 (p. 2) named John Haynes Holmes as a member of the League for Mutual Aid, cited as a Communist enterprise by the special committee (report, March 29, 1944, p. 76).

"According to the Daily Worker of February 16, 1958 (p. 16) Rev. John Haynes Holmes signed a statement to the mayor and city council in behalf of Simon Gerson, a Communist. An advertisement in the New York Times (February 19, 1948, p. 13), listed him as a supporter of the Citizens Committee to Defend Representative Government, supporting the seating of Gerson.

"The following was reported in the Daily Worker on September 22, 1948 (p. 5): 'Prof. Ralph Sarton Perry of Harvard University released yesterday the names of 83 prominent educators, churchmen, and individuals in other cultural fields, who have formed a committee of welcome for the Very Reverend Hewlett Johnson, D.D., dean of Canterbury Cathedral. Dean Johnson had been invited to visit the United States by the National Council of American-Soviet Friendship for a countrywide tour under its auspices. A visa was refused him on the ground that the sponsoring organization was on the Attorney General's list. The Committee of Welcome had extended to Dean Johnson an invitation to come to the United States under its independent auspice in November and December of this year and to speak at public gatherings.' The article named Dr. John Haynes Holmes, minister, the Community Church, New York, among the members of the committee.

"The National Council of American-Soviet Friendship was cited as subversive and Communist by the Attorney General (letters to Loyalty Review Board, released December 4, 1947 and September 21, 1948; also included in consolidated list released April 1, 1954). The special committee cited the National Council * * * as 'the Communist Party's principal front for all things Russian' (report, March 29, 1944, p. 156).

"The Daily Worker of February 19, 1951 (p. 2), reported that Rev. John Haynes Holmes was a signer of a statement addressed to the Attorney General, urging withdrawal of contempt of Congress proceedings against a number of persons who had been indicted for refusing to answer questions before congressional committees.

"The Daily People's World of August 1, 1951 (p. 2), reported that the Rev. John Haynes Holmes endorsed a statement attacking the Smith Act, which was anti-Communist legislation. It was reported in the Daily Worker of January 15, 1953 (p. 8), that Rev. John Haynes Holmes, minister emeritus, the Community Church of New York, signed a letter to President Truman asking for amnesty for 11 leaders of the Communist Party arrested under the Smith Act.

"In testimony before this committee on July 7, 1953, Benjamin Gitlow, former member of the Communist Party, said: 'Before the creation of the front organizations, the ministers who carried out the instructions of the Communist Party or collaborated with it were limited in numbers. The outstanding ones among them were * * *

Rev. John Haynes Holmes * * * (Communist Activities in the New York Area, p. 2077).

"The Daily Worker of January 1, 1953 (p. 1), reported that Rev. John Haynes Holmes signed a petition for clemency for the Rosenbergs. The same newspaper on January 13, 1953 (p. 2), published a list of 'the clergymen of various faiths and other religious leaders who have urged President Truman to use his power of clemency to save the lives of Ethel and Julius Rosenberg.' The name of Dr. John Haynes Holmes, New York, appeared on the list. The Rosenbergs had been convicted of conspiracy to commit espionage and sentenced to death."

"FEBRUARY 13, 1958.

"SUBJECT: WILLIAM LLOYD IMES, national vice president, NAACP, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"William Lloyd Imes was one of those who signed a statement on December 14, 1939 (the day before the 148th anniversary of the Bills of Rights), 'warning against denying to the Communists, or to any other minority group, the full freedom guaranteed by the Bills of Rights' (letter signed by Dashiell Hammett dated January 1940, attached to the statement).

"A pamphlet entitled 'The People vs. H.C.L.' which was dated December 11-12, 1937, named William Lloyd Imes as one of the sponsors of the Consumers National Federation, publishers of the pamphlet.

"The special Committee on Un-American Activities, in its report of March 29, 1944 (p. 155), cited the Consumers National Federation as a Communist-front organization.

"He supported the National Negro Congress (Daily Worker, Feb. 3, 1936, p. 2); spoke at the Second National Negro Congress in October 1937 (program of the congress); and supported a conference of the congress to push passage of the antilynch bill (Daily Worker, Mar. 17, 1938, p. 4).

"The Attorney General of the United States cited the National Negro Congress as subversive and Communist in letters to the Loyalty Review Board, released December 4, 1947, and September 21, 1948; redesignated April 27, 1953, and included on the April 1, 1954, consolidated list of organizations redesignated pursuant to Executive Order No. 10450. The organization was cited previously by the Attorney General as a Communist front (CONGRESSIONAL RECORD, Sept. 24, 1942, pp. 7687 and 7688). The special Committee on Un-American Activities, in its report of January 3, 1939 (p. 81), cited the National Negro Congress as 'the Communist-front movement in the United States among Negroes * * *'

"William Lloyd Imes sponsored a dinner-forum called by the Protestant Digest Associates on the subject, Protestantism answers hate, which was held in New York City, February 25, 1941.

"Protestant Digest was cited as 'a magazine which has faithfully propagated the Communist Party line under the guise of being a

religious journal' (special Committee on Un-American Activities, report, Mar. 29, 1944, p. 48).

"He signed a petition of the American Committee for Democracy and Intellectual Freedom, as shown on a mimeographed sheet attached to a letterhead dated January 17, 1940; and sponsored a citizens rally of the same organization, on April 13, 1940, in New York City (according to a leaflet announcing the rally).

"The special Committee on Un-American Activities, in its report of June 25, 1944 (p. 13), cited the American Committee for Democracy and Intellectual Freedom as a Communist front which defended Communist teachers.

"William Lloyd Imes sponsored the Fourth Annual Conference of the American Committee for Protection of Foreign Born, as shown on a letterhead of the conference which was held in Washington, D.C., March 2 to 3, 1940.

"The Attorney General cited the American Committee for Protection of Foreign Born as subversives and Communist in letters to the Loyalty Review Board, released June 1 and September 21, 1948; redesignated April 27, 1953, and included on the April 1, 1954, consolidated list. The special Committee on Un-American Activities, in its report of March 29, 1944 (p. 155), cited the American Committee for Protection of Foreign Born as 'one of the oldest auxiliaries of the Communist Party in the United States.'

"Dr. Imes contributed to Fight magazine, official organ of the American League Against War and Fascism (Fight for August 1935, p. 4); he was chairman of a rally of the American League which was held in Harlem (Fight for September 1935, p. 14); he spoke at the National People's Committee Against Hearst of the American League (Daily Worker, Oct. 21, 1936, p. 4); he supported a statement of the League, addressed to the United States Congress (Daily Worker, Feb. 27, 1937, p. 2); he was a member of the National People's Committee Against Hearst (letterhead of Mar. 16, 1937); he spoke in New York City at a joint meeting of the American League and American Friends of the Chinese People (Daily Worker, Sept. 23, 1937, p. 2); and was one of the sponsors of the China Aid Council of the American League, as shown on a letterhead of the council dated May 18, 1938. As shown by the Daily Worker of April 6, 1937 (p. 5), Rev. William Lloyd Imes, pastor, St. James Presbyterian Church, was guest of honor at a dinner of the American League Against War and Fascism, April 6, 1937, New York City.

"The Attorney General cited the American League Against War and Fascism as subversive and Communist in letters released December 4, 1947, and September 21, 1948; redesignated April 27, 1953, and included on the April 1, 1954, consolidated list. The organization was cited previously by the Attorney General as a 'Communist-front organization' in (re Harry Bridges, May 28, 1942, p. 10); and 'established in the United States in an effort to create public sentiment on behalf of a foreign policy adapted to the interests of the Soviet Union' (CONGRESSIONAL RECORD, Sept. 24, 1942, p. 7683). The special Committee on Un-American Activities, in its report of March 29, 1944 (p. 53),

cited the American League Against War and Fascism as 'completely under the control of Communists.'

"A letterhead dated November 3, 1937, lists William Lloyd Ines as a member of the national executive committee, People's Congress for Democracy and Peace; he sponsored the Boycott Japanese Goods Conference of the American League for Peace and Democracy, February 5, 1938 (Daily Worker, Jan. 11, 1938, p. 2); he signed a letter of the American League, as was shown in the Daily Worker of February 23, 1938 (p. 2); he signed a statement of the league concerning the international situation (New Masses, Mar. 15, 1938, p. 19); a letterhead of the New York City Division of the American League named him as a member of the advisory board as of that date (Sept. 22, 1938); a letterhead of the City Executive Committee, New York City Division, American League for Peace and Democracy, dated September 26, 1938, contained the name of the Reverend William Lloyd Ines in the list of members of the advisory board; he endorsed the American Congress for Peace and Democracy, January 6-8, 1939, in New York City, as shown on a letterhead dated December 7, 1938. A letterhead of the New York City Division, American League for Peace and Democracy, dated March 21, 1939, listed him as a member of the advisory board of the league. A letterhead of the Baltimore Division, American League for Peace and Democracy, dated May 18, 1939, contained the name of Dr. Ines in the list of members of the national committee; a letterhead of the league, dated July 12, 1939, furnished the same information, and also a pamphlet entitled '7½ Million * * *,' which was published by the league.

"The Attorney General cited the American League for Peace and Democracy as subversive and Communist in letters released June 1 and September 21, 1948; redesignated April 27, 1953, and included on the April 1, 1954, consolidated list. The Attorney General cited the organization previously as established in the United States in 1937 as successor to the American League Against War and Fascism 'in a effort to create public sentiment on behalf of a foreign policy adapted to the interests of the Soviet Union' (CONGRESSIONAL RECORD, Sept. 24, 1942, pp. 7683 and 7684). The special Committee on Un-American Activities, in its report of January 3, 1939 (pp. 69-71), cited the American League for Peace and Democracy as 'the largest of the Communist front movements in the United States.'

"The Daily Worker of August 13, 1940 (p. 5), named Dr. Ines as one who endorsed the Emergency Peace Mobilization; he was one of the sponsors of the Greater New York Committee of the Emergency Peace Mobilization, as shown on an undated letterhead.

"The Attorney General cited the Emergency Peace Mobilization as follows: "The American Peace Mobilization was formally founded at a meeting in Chicago at the end of August 1940, known as the Emergency Peace Mobilization' (CONGRESSIONAL RECORD, Sept. 24, 1942, p. 7684). The special Committee on Un-American Activities in its report of March 29, 1954, cited the Emergency Peace Mobilization as a Communist front which came forth, after Stalin signed his pact with Hitler, to oppose the national defense program,

lend-lease, conscription, and other American warmongering efforts. It immediately preceded the American Peace Mobilization in 1940.

"Dr. Ines sponsored the Conference on Constitutional Liberties in America, as shown on the call to the conference, June 7, 1940; he signed a letter of the National Federation for Constitutional Liberties, addressed to Attorney General Jackson, in defense of ballot rights of minority parties (Daily Worker, Sept. 24, 1940, p. 1); he signed a statement of the federation, opposing use of injunctions in labor disputes, according to an advertisement which appeared in the New York Times of April 1, 1946, in which source he was identified as president of Knoxville College.

"The special Committee on Un-American Activities cited the Conference on Constitutional Liberties in America as 'an important part of the solar system of the Communist Party's front organizations' (Report, Mar. 29, 1944, p. 102). The Attorney General cited the conference as one as a result of which was established the National Federation for Constitutional Liberties (CONGRESSIONAL RECORD, Sept. 24, 1942, p. 7687).

"The Attorney General cited the National Federation for Constitutional Liberties as subversive and Communist in letters released December 4, 1947, and September 21, 1948; redesignated April 27, 1953, and included on the April 1, 1954, consolidated list. The Attorney General cited the organization previously as 'part of what Lenin called the solar system of organizations, ostensibly having no connection with the Communist Party, by which Communists attempt to create sympathizers and supporters of their program * * *' (CONGRESSIONAL RECORD, Sept. 24, 1942, p. 7687). The special Committee on Un-American Activities, in its report of March 29, 1944 (p. 50), cited the National Federation for Constitutional Liberties as 'one of the viciously subversive organizations of the Communist Party.'

"Dr. Ines signed an open letter of the National Emergency Conference for Democratic Rights (Daily Worker, May 13, 1940, pp. 1 and 5); he was one of the sponsors of the Conference on Pan-American Democracy, as shown on a letterhead of that group dated November 16, 1938.

"The National Emergency Conference for Democratic Rights was cited as a Communist front organization by the special committee in its report of March 29, 1944 (pp. 48 and 102). The Committee on Un-American Activities, in its report of September 2, 1947 (p. 12), cited the National Emergency Conference for Democratic Rights as follows: 'It will be remembered that during the days of the infamous Soviet-Nazi pact, the Communists built protective organizations known as the National Emergency Conference, the National Emergency Conference for Democratic Rights, which culminated in the National Federation for Constitutional Liberties.'

"The Conference on Pan-American Democracy (known also as Council for Pan-American Democracy) was cited as subversive and Communist by the Attorney General in letters released June 1 and September 21, 1948; redesignated April 27, 1953, pursuant to Execu-

tive Order No. 10450. The Special Committee on Un-American Activities, in its report of March 29, 1944 (pp. 161 and 164), cited the Conference on Pan-American Democracy as a Communist front which defended Carlos Luiz Prestes, a Brazilian Communist leader and former member of the executive committee of the Communist International.

"Dr. Imes was one of the sponsors of the Greater New York Emergency Conference on Inalienable Rights, as shown on the program of the conference, February 12, 1940. He spoke before the American Youth Congress (Daily Worker, Jan. 29, 1938, p. 3); and endorsed the American Youth Act, as shown on a press release of the American Youth Congress.

"The special Committee on Un-American Activities, in its March 29, 1944, report (pp. 98 and 120), cited the Greater New York Emergency Conference on Inalienable Rights as a Communist front which was succeeded by the National Federation for Constitutional Liberties. The organization was cited by the Committee on Un-American Activities (report, Sept. 2, 1947, p. 3), as among a 'maze of organizations' which were 'spawned for the alleged purpose of defending civil liberties in general but actually intended to protect Communist subversion from any penalties under the law.'

"The American Youth Congress was cited as subversive and Communist by the Attorney General in letters released December 4, 1947, and September 21, 1948; redesignated April 27, 1953, and included on the April 1, 1954, consolidated list. The group was cited previously by the Attorney General as 'originated in 1934 and * * * has been controlled by Communists and manipulated by them to influence the thought of American youth' (CONGRESSIONAL RECORD, September 24, 1942, p. 7685). The Special Committee on Un-American Activities, in its report of June 25, 1942 (p. 16), cited the American Youth Congress as 'one of the principal fronts of the Communist Party' and 'prominently identified with the White House picket line * * *.'

"According to the proceedings and report, and to 'Equal Justice' for July 1939, he sent greetings to the National Conference of the International Labor Defense. He signed a letter to President Roosevelt, defending the publication, New Masses (issue of April 2, 1940, p. 21).

"The Attorney General cited the International Labor Defense as subversive and Communist in letters released June 1 and September 21, 1948; redesignated April 27, 1953, and included on the April 1, 1954, consolidated list. The group was cited previously by the Attorney General as the 'legal arm of the Communist Party' (CONGRESSIONAL RECORD, Sept. 24, 1942, p. 7686). The special Committee on Un-American Activities, in its report of January 3, 1939 (pp. 75-78), cited the International Labor Defense as 'the legal defense arm of the Communist Party of the United States.'

"New Masses was cited as a 'Communist periodical' by the Attorney General (CONGRESSIONAL RECORD, Sept. 24, 1942, P. 7688). The special Committee on Un-American Activities, in its report of March 29, 1944 (pp. 48 and 75), cited New Masses as a 'nationally circulated weekly journal of the Communist Party * * *.'

"FEBRUARY 13, 1956.

"SUBJECT: DR. W. MONTAGUE COBB, chairman of the national health committee, NAACP, 1954.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"According to the Bookshopper for July 1948 (p. 2), Montague Cobb, professor Howard University, lectured at a membership meeting in January 1948 of the Washington Cooperative Bookshop, 916 17th Street NW., Washington, D.C.

"The Attorney General of the United States found that 'evidence of Communist penetration or control [of the Washington Cooperative Bookshop] is reflected in the following: Among its stock the establishment has offered prominently for sale books and literature identified with the Communist Party and certain of its affiliates and front organizations * * * certain of the officers and employees of the bookshop, including its manager and executive secretary, have been in close contact with local officials of the Communist Party of the District of Columbia' (CONGRESSIONAL RECORD, Sept. 24, 1942, p. 7688); subsequently, it was cited by the Attorney General as subversive and Communist (press releases of December 4, 1947, and September 21, 1948; also included on consolidated list of April 1, 1954). The special Committee on Un-American Activities cited the organization as a Communist front (report 1311 of March 29, 1944).

"Dr. W. Montague Cobb, identified as professor of anatomy, Howard University, spoke at the 1947 convention of the Association of Internes and Medical Students, according to their official organ, the Interne (January 1948, p. 61); the same publication (February 1950, p. 27) reported that he had spoken at a convention of the organization; the printed program of the 16th Convention of the Association of Internes and Medical Students which was held in December 1950, revealed that he had spoken at the convention.

"The Association of Internes and Medical Students was cited as an organization which 'has long been a faithful follower of the Communist Party line,' and which supported the International Union of Students' Second World Student Congress in Prague in August 1950 (report of the Committee on Un-American Activities on the Communist Peace Offensive, dated April 1, 1951).

"An advertisement which appeared in the Washington Post of May 18, 1948 (p. 15), disclosed the name of Dr. W. Montague Cobb as having signed a statement against the Mundt (anti-Communist) bill."

"FEBRUARY 13, 1956.

"SUBJECT: WESLEY W. LAW, Savannah, Ga., national board of directors, NAACP, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"An undated press release, General Youth Statement (p. 3), listed W. W. Law, Savannah, Ga., as an endorser of the Youth Statement of the Mid-Century Conference for Peace (May 29-30, 1950).

"The Committee on Un-American Activities, in its report on the Communist Peace Offensive, April 1, 1951 (p. 58), cited the Mid-Century Conference for Peace at a meeting held in Chicago, May 29 and 30, 1950, by the Committee for Peaceful Alternatives to the Atlantic Pact and as having been 'aimed at assembling as many gullible persons as possible under Communist direction and turning them into a vast sounding board for Communist propaganda.'

"The Daily Worker of June 23, 1949 (p. 2), reported that W. W. Law, past national chairman, National Association for Advancement of Colored People, youth division, Savannah, Ga., signed a statement against the North Atlantic Pact."

"FEBRUARY 13, 1958.

"SUBJECT: DR. J. M. TINSLEY, national board of directors, national health committee, NAACP, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"As shown by the official proceedings of the National Negro Congress, 1936 (pp. 5, 41), Dr. J. M. Tinsley, Virginia, was a member of the presiding committee and a member of the national executive council of the organization. J. M. Tinsley, Richmond, was treasurer of the National Negro Congress (Daily Worker, Apr. 7, 1936, p. 3).

"The Attorney General of the United States cited the National Negro Congress as subversive and Communist in letters to the Loyalty Review Board, released December 4, 1947, and September 21, 1948; redesignated April 27, 1953, and included on the April 1, 1954, consolidated list of organizations designated previously pursuant to Executive Order No. 10450. The organization was cited previously by the Attorney General as a Communist-front group (CONGRESSIONAL RECORD, Sept. 24, 1942, pp. 7687 and 7688). The special Committee on Un-American Activities, in its report of January 3, 1939 (p. 81), cited the National Negro Congress as 'the Communist-front movement in the United States among Negroes' * * *.

"J. M. Tinsley endorsed the Southern Negro Youth Congress (Daily Worker, Feb. 25, 1938, p. 3).

"The Southern Negro Youth Congress was cited by the Attorney General as subversive and among the affiliates and committees of the Communist Party, U.S.A., which seeks to alter the form of government of the United States by unconstitutional means (letter released Dec. 4, 1947; redesignated Apr. 27, 1953, and included on Apr. 1, 1954, consolidated list). The special Committee on Un-American Activities, in its report of January 3, 1940 (p. 9), cited the Southern Negro Youth Congress as a Communist-front organization. The Committee on Un-American Activities, in its report of April 17, 1947 (p. 14), cited the Southern Negro Youth Congress as 'a surreptitiously controlled' by the Young Communist League."

"FEBRUARY 14 1956.

"SUBJECT: DR. HARRY J. GREENE, Philadelphia, Pa., national board of directors, national health committee, NAA-CP, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"On the call to a Conference on Constitutional Liberties in America at Washington, D.C., June 7-9, 1940, the name of Dr. Harry J. Greene of Philadelphia, Pa., appears in a list of the sponsors; he was one of the sponsors of the National Federation for Constitutional Liberties, as shown on their letterheads dated September 10 and November 6, 1940, in which sources he is shown as being from Philadelphia.

"The printed program of a National Action Conference for Civil Rights which was scheduled to be held in Washington, D.C., April 19-20, 1941, named Dr. Harry J. Greene, Philadelphia, as one of the sponsors of that conference, called by the National Federation for Constitutional Liberties.

"The Attorney General of the United States cited the National Federation for Constitutional Liberties (formed as a result of the Conference on Constitutional Liberties in America, June 7-9, 1940), as 'part of what Lenin called the solar system of organizations * * * by which Communists attempt to create sympathizers and supporters of their programs'; and as subversive and Communist. (CONGRESSIONAL RECORD, Sept. 24, 1942, p. 7687; and press releases of Dec. 4, 1947, and Sept. 21, 1948, respectively; also included on consolidated list released Apr. 1, 1954.) The special Committee on Un-American Activities cited the National Federation for Constitutional Liberties as 'one of the viciously subversive organizations of the Communist Party' (report of Mar. 29, 1944; also cited in reports of June 25, 1942, and Jan. 2, 1943). The Committee on Un-American Activities also cited the National Federation for Constitutional Liberties in a report released September 2, 1947.

"Dr. Harry J. Greene was chairman of a discussion group on 'Denial of Citizenship Rights' at the Second National Negro Congress, October 15-17, 1937, in Philadelphia, as shown on the printed program of that congress (p. 19) in which source he is identified as being from Philadelphia, Pa., and president of the Philadelphia branch, National Association for the Advancement of Colored People. A booklet of the National Negro Congress entitled 'We Are Rising' (April 1939, p. 2) named one Harry Green as vice president, Philadelphia council of the congress.

"The special Committee on Un-American Activities cited the National Negro Congress as 'the Communist-front movement in the United States among Negroes' (report of Jan. 3, 1939; also cited in reports of Jan. 3, 1940; June 25, 1942; and Mar. 29, 1944). The Attorney General cited the Congress as 'an important sector of the democratic front, sponsored and supported by the Communist Party' (CONGRESSIONAL RECORD, Sept. 24, 1942, pp. 7687 and 7688); later, the

Attorney General cited the congress as subversive and Communist (press releases of Dec. 4, 1947 and Sept. 21, 1948; also included on consolidated list released Apr. 1, 1954).

***FEBRUARY 13, 1956.**

"SUBJECT: ROSCOE DUNJEE, national vice-president, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"The Daily Worker for April 16, 1947 (p. 2), reported that Roscoe Dunjee, attorney, Oklahoma City, Okla., was one of the signers of a statement defending the Communist Party. He was one of the signers of a statement condemning 'punitive measures directed against the Communist Party' as shown by the April 20, 1947 issue of the Worker (p. 8). The Daily Worker for April 27, 1947 (p. 24), shows Roscoe Dunjee as one of the signers of a statement against the ban on the Communist Party, Roscoe C. Dunjee, publisher of the Black Dispatch, Oklahoma City, was a sponsor of a statement attacking the arrest of the Communist Party leaders, according to the Daily Worker, August 23, 1948, (p. 3). He sponsored the 'Statement by Negro Americans' in behalf of the arrested Communist leaders as shown by the August 29, 1948, issue of the Worker (p. 11). The Daily Worker for March 7, 1950 (p. 4), reported that Roscoe Dunjee attacked Judge Medina in the case of the Communist leaders.

"Roscoe Dunjee was a member of the initiating committee, of the Congress on Civil Rights held in Detroit, Mich., April 27 and 28, 1946, as shown by the summons to the congress. The Daily Worker of April 16, 1947 (p. 2), reported that Roscoe Dunjee, of Oklahoma City, Okla., was one of the signers of a statement released by the Civil Rights Congress defending the Communist Party. The Civil Rights Congress was cited as subversive and Communist by the Attorney General of the United States (letters to the Loyalty Review Board, 1947 and 1948; included in consolidated list released Apr. 1, 1954). The Committee on Un-American Activities cited the organization as being 'dedicated not to the broader issues of civil liberties, but specifically to the defense of individual Communists and the Communist Party' and 'controlled by individuals who are either members of the Communist Party or openly loyal to it' (report No. 115, Sept. 2, 1947, pp. 2 and 19).

"The pamphlet Seeing Is Believing, 1947, and the testimony of Walter S. Steele, public hearings, Committee on Un-American Activities, July 21, 1947 (p. 135), show Roscoe Dunjee as a member of the Council on African Affairs, Inc. The Council on African Affairs was cited as subversive and Communist by the United States Attorney General (letters to the Loyalty Review Board, released December 4, 1947, and September 21, 1948. He redesignated the organization on April 27, 1953; also included in consolidated list released April 1, 1954).

"Roscoe Dunjee was a sponsor of the Win the Peace Conference of the National Committee To Win the Peace, as shown by the Daily Worker March 5, 1946, a letterhead of the organization dated February

28, 1946, and the call to a win-the-peace conference, National Press Building, Washington, D.C., April 5-7, 1946. The National Committee To Win the Peace was cited as subversive and Communist by the United States Attorney General (letters to the Loyalty Review Board, released in 1947 and 1948; redesignated April 27, 1953; also included in consolidated list released April 1, 1954).

"The Daily Worker for October 19, 1948 (p. 7), reported that Roscoe Dunjee was one of those who signed a statement released by the National Council of the Arts, Sciences, and Professions. The council was cited as a Communist front by this committee in its review of the Scientific and Cultural Conference for World Peace (April 26, 1950--original release date April 19, 1949, p. 2).

"Roscoe Dunjee was a signer of the call to the Second Southern Conference for Human Welfare, Chattanooga, Tenn., April 14-18, 1940. A letterhead of the conference, dated June 4, 1947, shows Roscoe Dunjee as vice president and a member of the national committee of that organization. He was also shown as vice president of the organization in an undated leaflet, *The South Is Closer Than You Think*, and the testimony of Walter S. Steele, public hearings, Committee on Un-American Activities, July 21, 1947, page 139. The Southern Conference for Human Welfare was cited as a Communist front which received money from the Robert Marshall Foundation, one of the principal sources of funds by which many Communist fronts operate. (Special Committee on Un-American Activities, report, March 29, 1944, p. 147.) In its report of June 12, 1947, the Committee on Un-American Activities described the conference as a Communist-front organization 'which seeks to attract southern liberals on the basis of its seeming interest in the problems of the South,' although its 'professed interest in southern Welfare is simply an expedient for larger aims serving the Soviet Union and its subservient Communist Party in the United States.'

"The New York Times of October 9, 1944 (p. 12), reported that Roscoe Dunjee was one of the signers of an open letter to Gov. Thomas E. Dewey for the pardon of Morris U. Schappes, which was sponsored by the Schappes Defense Committee. The Schappes Defense Committee was cited as a Communist organization by the United States Attorney General (letter to the Loyalty Review Board, released April 27, 1949; redesignated April 27, 1953). The special Committee on Un-American Activities described the Schappes Defense Committee as 'a front organization with a strictly Communist objective, namely, the defense of a self-admitted Communist who was convicted of perjury in the courts of New York.' Morris U. Schappes 'was on the teaching staff of the College of the City of New York for a period of 13 years. In 1956 his superior on the college faculty refused to recommend him for reappointment. This action led to prolonged agitation by the Communist Party' (report, March 29, 1944, p. 71).

"Roscoe Dunjee was a member of the advisory board of the Southern Negro Youth Congress according to a letterhead of that organization dated June 12, 1947, the testimony of Walter S. Steele, public hearings, Committee on Un-American Activities, July 21, 1947 (p. 97), a letterhead dated August 11, 1947, and a page from a leaflet published

by the organization. The Southern Negro Youth Congress was cited as subversive and among the affiliates and committees of the Communist Party, U.S.A., 'which seeks to alter the form of government of the United States by unconstitutional means' (U.S. Attorney General, letter to Loyalty Review Board, released December 4, 1947; redesignated April 27, 1953; also included in consolidated list released April 1, 1954). The Committee on Un-American Activities said it was 'sur-reptitiously controlled' by the Young Communist League (report No. 271, April 17, 1947, p. 14). The Special Committee on Un-American Activities also cited the organization as a Communist front (report, January 3, 1940, p. 9).

"According to the Daily Worker for April 1, 1945 (p. 6m), Roscoe Dunjee was asked what he thought of New York's new antidiscrimination law, and was quoted as replying: 'It shows a trend in the direction which the United States as a nation must take if we rise to the level of Russian morality' * * *."

"Photographs of Roscoe Dunjee are found in the Daily Worker, issues of December 9, 1941 (p. 7), and April 1, 1945 (p. 6m).

"Roscoe Dunjee, editor of the Black Dispatch, Oklahoma City, Okla., was quoted in the March 28, 1944, issue of New Masses (p. 15), as follows:

"I attended a Lincoln and Douglas meeting held under the auspices of the Communist Party, February 12 * * * Most assuredly Americans should stop and listen to what Communists have to say. The Russian experiment as expressed today in Soviet life is too effective for anyone to attempt to overlook this. As president of the State conference of branches of the National Association for the Advancement of Colored People, I have every year for the past 10 invited the Communist to address our meeting. Alan Shaw, secretary of the Communist Party in Oklahoma, addressed our State conference at Tulsa last November * * * personally I endorse the idea of an international State * * * as espoused by the Communist Party."

"The following is quoted from the Daily Worker of April 8, 1952 (p. 2):

"Roscoe Dunjee, editor of the Oklahoma Black-Dispatch, leading Negro newspaper in the Southwest, has hailed in a long editorial the victory won by William L. Patterson, head of the Civil Rights Congress, in securing acquittal on a contempt of Congress charge."

"(Note citation of Civil Rights Congress on p. 1 of this report.)

"Roscoe C. Dunjee, Oklahoma City, was listed as one of four sponsors of a statement which appeared in the Sunday Worker, August 29, 1948 (p. 11), from which the following is quoted:

"THE FIRST LINE OF DEFENSE

"(Statement by Negro Americans to the President and Attorney General of the United States)

"We, the undersigned Negro Americans, strongly condemn your hysteria-breeding arrests of national leaders of the Communist Party, and call upon you to take positive action to protect civil rights instead of persecuting political minorities."

"We raise here no defense of the principles of the Communist Party. Our concern is to defend the right of political and other minorities, especially the Negro people, to fight for the kind of society which they consider necessary to give full expression to the principles of American democracy * * *"

"The obvious purpose of these Gestapo-like arrests of Communist leaders is to frighten people away from the Wallace movement and progressive people's organizations generally; practically all of which have been slandered as Communist or subversive * * *"

"We call upon our Government to halt its Fascist-like attacks upon opposition minorities, and to act for protection of minority rights * * *"

"FEBRUARY 13, 1956.

"SUBJECT: DR. S. RALPH HARLOW, national board of directors, NAACP, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"The program of the fifth national conference of the American Committee for Protection of Foreign Born, Atlantic City, N.J., March 29-30, 1941, listed S. Ralph Harlow as a sponsor.

"The Attorney General of the United States cited the American Committee for Protection of Foreign Born as subversive and Communist in letters to the Loyalty Review Board, released June 1 and September 21, 1948. The organization was redesignated by the Attorney General April 27, 1953, pursuant to Executive Order No. 10450, and included on the April 1, 1954, consolidated list of organizations previously designated. The special Committee on Un-American Activities, in its report of March 29, 1944 (p. 155), cited the American Committee for Protection of Foreign Born as 'one of the oldest auxiliaries of the Communist Party in the United States.'

"S. Ralph Harlow was an endorser of the Committee for Citizenship Rights as shown by a letterhead dated January 10, 1942. The special Committee on Un-American Activities, in its report of March 29, 1944 (p. 95), cited the Committee for Citizenship Rights as an organization which defended the 'interests of the Communist Party.' The Committee on Un-American Activities, in its report of September 2, 1947 (p. 3), cited the Committee for Citizenship Rights, as among a 'maze of organizations' which were 'spawned for the alleged purpose of defending civil liberties in general but actually intended to protect Communist subversion from any penalties under the law.'

"Prof. S. Ralph Harlow signed a statement calling for international agreement to ban use of atomic weapons attached to a press release of the Committee for Peaceful Alternatives to the Atlantic Pact, December 14, 1949 (p. 9). He was identified in this instance as associated with Smith College, Northampton, Mass.

"The Committee on Un-American Activities, in its report on the Communist Peace Offensive, April 1, 1951 (p. 54), cited the Committee for Peaceful Alternatives to the Atlantic Pact as an organization which was formed as a result of the Conference for Peaceful Alterna-

tives to the Atlantic Pact, and which was located, according to a letterhead of September 16, 1950, at 30 North Dearborn Street, Chicago, Ill.; and to further the cause of Communists in the United States doing their part in the Moscow campaign.

"As shown by Soviet Russia Today of November 1937 (p. 79), S. Ralph Harlow was a signer of the Golden Book of American Friendship With the Soviet Union, cited as a 'Communist enterprise' signed hundreds of well-known Communists and fellow travelers:

"January 23-25, 1948, New York City' conference call of the National Conference on American Policy in China and the Far East, listed Dr. S. Ralph Harlow, Smith College, as a sponsor of the conference. The Attorney General cited the National Conference on American Policy in China and the Far East as Communist, and a conference called by the Committee for a Democratic Far Eastern Policy in a letter released July 25, 1949; redesignated April 27, 1953, and included on the April 1, 1954, consolidated list.

"A news release of the National Federation for Constitutional Liberties dated December 26, 1941, listed S. Ralph Harlow as a signer. He signed the organization's 1943 message to the House of Representatives (leaflet, attached to undated letterhead); and the group's statement supporting the War Department's order on granting commissions to members of the Armed Forces who have been members of or sympathetic to the views of the Communist Party (undated leaflet, 'the only sound policy for a democracy * * * and Daily Worker, March 19, 1945, p. 4).

"The Attorney General cited the National Federation for Constitutional Liberties as subversive and Communist in letters released December 4, 1947, and September 21, 1948; redesignated April 27, 1953, and included on the April 1, 1954, consolidated list. The organization was cited previously by the Attorney General as part of what Lenin called the solar system of organizations, ostensibly having no connection with the Communist Party, by which Communists attempt to create sympathizers and supporters of their program (CONGRESSIONAL RECORD, Sept. 24, 1942, p. 7687). The special Committee on Un-American Activities, in its report of March 29, 1944 (p. 50), cited the National Federation for Constitutional Liberties as one of the viciously subversive organizations of the Communist Party. The Committee on Un-American Activities, in its report of September 2, 1947 (p. 3), cited the National Federation for Constitutional Liberties as among a maze of organizations which were spawned for the alleged purpose of defending civil liberties in general but actually intended to protect Communist subversion from any penalties under the law.

"As shown by the Daily Worker of September 17, 1940 (pp. 1, 5), S. Ralph Harlow signed a telegram of the New York Conference for Inalienable Rights to President Roosevelt and Attorney General Jackson in behalf of the International Fur and Leather Workers Union defendants. The special Committee on Un-American Activities, in its report of March 29, 1944 (p. 149), cited the New York Conference for Inalienable Rights as a Communist-front group.

"S. Ralph Harlow sponsored the call for the Protestantism Answers

Hate dinner-forum held under auspices of the Protestant Digest, New York, February 25, 1941, as shown by a leaflet. He was identified in this instance as professor of sociology, Smith College, Northampton, Mass.

"The special Committee on Un-American Activities, in its report of March 29, 1944 (p. 48), cited the Protestant Digest as 'a magazine which has faithfully propagated the Communist Party line under the guise of being a religious journal.'

"According to the New York Times, October 9, 1944 (p. 12), S. Ralph Harlow, chairman, department of religion, Smith College, Northampton, Mass., signed an open letter of the Schappes defense committee to Gov. Thomas E. Dewey asking a pardon for Morris Schappes."

"The Schappes defense committee was cited as Communist by the Attorney General in a letter released April 27, 1949; redesignated April 27, 1953, and included on the April 1, 1954, consolidated list. The special Committee on Un-American Activities cited the organization as 'a front organization with a strictly Communist objective, namely, the defense of a self-admitted Communist who was convicted of perjury in the courts of New York.' (Report, Mar. 29, 1944, p. 71).

"Prof. S. Ralph Harlow endorsed the World Peace Appeal as shown by an undated leaflet, Prominent Americans Call for . . . (received Sept. 11, 1950), and the Daily Worker, August 14, 1950 (p. 2).

"The Committee on Un-American Activities, in its report on the Communist peace offensive, April 1, 1951 (p. 34), cited the World Peace Appeal as a petition campaign launched by the Permanent Committee of the World Peace Congress at its meeting in Stockholm, March 16-19, 1950; as having 'received the enthusiastic approval of every section of the international Communist hierarchy'; as having been lauded in the Communist press, putting 'every individual Communist on notice that he "has duty to rise to this appeal"'; and as having 'received the official endorsement of the Supreme Soviet of the U.S.S.R., which has been echoed by the governing bodies of every Communist satellite country, and by all Communist parties throughout the world.'"

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"FEBRUARY 13, 1956.

"SUBJECT: ROBERT C. WEAVER, national board of directors, NAACP, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"Robert C. Weaver, identified from Washington, D.C., as an economic adviser to the Secretary of Interior, was discussion leader of a panel on 'The Federal Housing Program and the Negro' at the Second National Negro Congress as shown by the program of that congress which was held in Philadelphia, October 15-17, 1937.

"The National Negro Congress was cited as subversive and Communist by the Attorney General of the United States in letters released December 4, 1947, and September 21, 1948. The special committee in

its report of January 3, 1939 (p. 81), cited the National Negro Congress as 'the Communist-front movement in the United States among Negroes.' The Attorney General had cited the group previously as follows: 'From the record of its activities and the composition of its governing bodies, there can be little doubt that it has served what James M. Ford, Communist vice presidential candidate elected to the executive committee in 1937, predicted: "An important sector of the democratic front," sponsored and supported by the Communist Party' (CONGRESSIONAL RECORD, Sept. 24, 1942, pp. 7687 and 7688).

"The Daily Worker of February 8, 1939 (p. 2), listed Robert C. Weaver, identified as Assistant Housing Administrator of the Department of Interior, as one of the signers of the Negro People's Committee to Aid Spanish Democracy letter to lift the Spanish embargo. The special committee in its report of March 29, 1944 (p. 180), cited the Negro People's Committee to Aid Spanish Democracy as a Communist-front organization.

"Robert C. Weaver, Washington, D.C., contributed financially to Social Work Today as shown by the January 1941 issue of that publication (pp. 16-18). Social Work Today was cited as a Communist magazine by the special committee in its report of March 29, 1944 (p. 129).

"R. C. Weaver, 1206 Kenyon Street, Washington, D.C., was listed as a member of the Washington Book Shop on a 1941 membership list of the organization subpoenaed by this committee. The Washington Book Shop Association was cited as subversive and Communist by the Attorney General in letters released December 4, 1947, and September 21, 1948. The Attorney General cited the organization previously as showing 'evidence of Communist penetration or control' according to the CONGRESSIONAL RECORD, September 24, 1942 (p. 7688). The special committee in report of March 29, 1944 (p. 150), cited the organization as a Communist-front organization.

"Robert C. Weaver was the author of The Negro Ghetto which was reviewed by Herbert Aptheker in the August 1948 issue of Masses and Mainstream (p. 85). The congressional committee, in its report on the Congress of American Women, April 26, 1950 (p. 75), cited Masses and Mainstream as successor to New Masses, a Communist magazine."

"FEBRUARY 13, 1956.

"SUBJECT: LEWIS GANNETT, national board of directors, NAACP, national vice president, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"On December 18, 1934, the Daily Worker (p. 5) reported the following: 'A reception to mark the 10th anniversary of International Publishers took place * * * December 14, in * * * the new school for social research * * * Scores of prominent writers, artists, and editors were present to pay tribute to International Publishers' decade of achievement * * * Among those present were * * * Lewis Gannett, book-review columnist of New York Herald Tribune: * * *'

"The Attorney General of the United States cited International Publishers as 'The (Communist) Party's publishing house,' headed by Alexander Trachtenberg (CONGRESSIONAL RECORD, September 24, 1942, p. 7686); and as the 'publishing agency of the Communist Party' (brief for the United States in the case of William Schneiderman, p. 145). The special Committee on Un-American Activities cited International Publishers as an 'official publishing house of the Communist Party in the United States' (Reports of January 3, 1940, and June 25, 1942); the Committee on Un-American Activities cited the organization as the 'Official American Communist Party publishing house' (Report No. 1920 dated May 11, 1948).

"Lewis Gannett, Harvard, was a member of the sponsoring committee of dinner sponsored by the American Student Union for 'alumni of the student movement and present members' as shown in Student Advocate for February 1937 (p. 2). The American Student Union was cited as a Communist front which 'the result of a united front gathering of young Socialists and Communists' in 1935. The Young Communist League took credit for creation of the organization (Report of the special Committee on Un-American Activities dated Jan. 3, 1939; also cited in reports of Jan. 3, 1940; June 25, 1942; and March 29, 1949).

"A letterhead of the American League for Peace and Democracy dated April 6, 1939 contains the name of Lewis Gannett in a list of members of the Writers' and Artists' Committee of that organization; the same information is shown in public hearings before this committee July 21, 1953 (p. 3639). The American League was cited by the Attorney General as 'designed to conceal Communist control, in accordance with the new tactics of the Communist International' (CONGRESSIONAL RECORD, September 24, 1942, pp. 7683 and 7684); and subsequently, as subversive and Communist (press releases of June 1 and September 21, 1948; also included on consolidated list released April 1, 1954). The special committee cited the American League for Peace and Democracy as 'a bold advocacy of treason' (reports of January 3, 1939; Jan. 3, 1940; Jan. 3, 1941; June 25, 1942; and Jan. 2, 1943).

"The special committee cited the American Committee for Democracy and Intellectual Freedom as a Communist front which defended Communist teachers (report of June 25, 1942; also cited in report of March 29, 1944); a letterhead of the American Committee for Democracy and Intellectual Freedom, dated May 26, 1940, contains the name of Lewis Gannett in a list of members of the organization's national executive committee.

"A letterhead of the American Russian Institute for Cultural Relations With the Soviet Union, Inc., contains the name of Lewis Gannett in a list of members of its board of directors; the letterhead was dated July 14, 1938. The Attorney General cited the American Russian Institute as Communist (press release of April 27, 1949; also included on consolidated list dated April 1, 1954).

"Lewis S. Gannett was a member of the board of directors of the American Fund for Public Service, as shown on a photostat of their

letterhead dated September 8, 1930. The 'American Fund for Public Service' was established by Charles Garland, son of the wealthy James A. Garland. Young Garland, conditioned against wealth through radical acquaintances at Harvard, declined to accept his inheritance for his own personal use. Instead, he established, in 1922, the American Fund for Public Service with the sum of \$900,000 which consisted largely of conservative securities. During the lush twenties, the fund grew to some \$2 million.

"A self-perpetuating board of directors was set up for the purpose of handing out this easy money. Sidney Hillman was among them. Associated with Hillman as directors were Roger N. Baldwin, William Z. Foster, Lewis Cannett, * * * (From report 1311 of the special committee dated March 29, 1944.)

"An undated booklet of Friends of the Soviet Union contains the name of Lewis S. Cannett in a list of members of the Reception Committee for the Soviet Flyers, under auspices of that organization; he contributed a review of Maxim Gorki's 'A Book of Short Stories to Soviet Russia Today' (September 1939, p. 26). The Attorney General cited Friends of the Soviet Union as Communist (press releases of December 4, 1947, June 1 and September 21, 1948; also included on consolidated list released April 1, 1954); the 'one of the most open Communist fronts in the United States' (report of January 3, 1939; also cited in reports of January 3, 1940; June 25, 1942; and March 29, 1944). Soviet Russia Today was published by Friends of the Soviet Union.

"Soviet Russia Today for November 1937 (p. 79) published a list of individuals who signed the Golden Book of American Friendship With the Soviet Union under this statement: 'I hereby inscribe my name in greeting to the people of the Soviet Union on the 20th anniversary of the establishment of the Soviet Republic.' The Golden Book of American Friendship With the Soviet Union was cited as a 'Communist enterprise' signed by hundreds of well-known Communists and fellow travelers (Report 1311 of the special committee dated March 29, 1944).

"The Daily Worker of January 18, 1939 (p. 7) reported that Lewis Cannett was a committee sponsor of the League of American Writers, cited as a Communist-front organization by the special committee (reports of January 3, 1940; June 25, 1942; and March 29, 1944). The Attorney General cited it as being under 'Communist control' and as subversive and Communist (CONGRESSIONAL RECORD, September 24, 1942, pp. 7685 and 7686; and press releases of June 1, and September 21, 1948; also included on consolidated list of April 1, 1954).

"New Masses for March 16, 1937 (p. 28) named Lewis Cannett as one of the sponsors of a sendoff dinner for the ambulance corps under the auspices of the American Artists and Writers Committee, Medical Bureau, American Friends of Spanish Democracy; an undated letterhead of the Writers' and Artists' Committee for Medical Aid to Spain also contains his name in a list of sponsors; the letterhead also carries the notation 'Affiliated with the Medical Bureau to Aid Spanish Democracy'; he signed a petition of American Friends of Spanish Democracy

to lift the arms embargo, as shown in the Daily Worker of April 8, 1938 (p. 4).

"During 1937 and 1938, the Communist Party campaigned for support of the Spanish Loyalist cause, 'recruiting men and organizing multifarious so-called relief organizations * * * such as * * * American Friends of Spanish Democracy' (Report 1311 of the special committee dated March 29, 1944).

"Another such organization which was cited by the special committee (see last paragraph above) was the Medical Bureau and North American Committee To Aid Spanish Democracy; their letterhead of July 6, 1938, contained the name of Lewis Gannett in a list of members of the Writers' and Artists' Committee.

"The Liberator for September 1921 (p. 11) contained Lewis Gannett's interview with 'Bill Haywood in Moscow'; he also contributed an article to the July 1922 issue of the same publication (p. 30). The special committee cited the Liberator as a 'Communist magazine' (report of June 25, 1942).

"Lewis Gannett contributed articles to New Masses for February 16, 1937 (p. 21) and August 10, 1943 (p. 20); he signed New Masses' Letter to the President of the United States, as shown in New Masses of April 2, 1940 (p. 21), which source identified him as literary editor, New York Herald Tribune. New Masses has been cited by the Attorney General as a 'Communist periodical' (CONGRESSIONAL RECORD, September 24, 1942, p. 7688); the special committee cited it as the 'nationally circulated weekly journal of the Communist Party * * * whose ownership was vested in the American Fund for Public Service' (report of March 29, 1944; also cited in reports of January 3, 1939 and June 25, 1942).

"A letterhead of the All-American Anti-Imperialist League, dated April 11, 1928, contains the name of Lewis S. Gannett in a list of members of that organization's national committee. The Attorney General cited the All-American Anti-Imperialist League as a 'Communist-front organization' (in re Harry Bridges, May 28, 1942, p. 10); the special committee cited the group as a Communist front (report of March 29, 1944)."

"FEBRUARY 13, 1956.

"SUBJECT: DR. BUELL G. GALLAGHER, national board of directors, NAACP, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"According to the Communist publication, the Daily Worker of April 13, 1936 (p. 3), Buell G. Gallagher, identified as president of Talladega College, endorsed a peace strike of 500,000 students who planned a demonstration for April 22, 1936. The strike was sponsored by the American Student Union which was cited as a Communist-front organization by the special Committee on Un-American Activities in reports dated January 3, 1940, June 25, 1942, and March 29, 1944.

"The Daily People's World, the Communist journal on the west coast, listed Dr. Buell Gallagher as a member of the Draft Cross Committee, in connection with a move to draft Mayor Laurence L. Cross, of Berkeley, Calif., as candidate for Congress from the Seventh District of California. (See Daily People's World of January 28, 1948, p. 3.) In the February 17, 1948, issue of the Daily People's World (p. 3), we find that 'the committee originally formed to draft Mayor Laurence Cross for Congress has resolved to stay together in support of the candidacy of Dr. Buell G. Gallagher in the Seventh District. According to Judge Louis J. Hardie, committee chairman, 'In Dr. Gallagher, we feel that we have found a congressional candidate who possesses those qualities of intelligence, integrity, and idealism which we admire in Dr. Cross. His deep acquaintance with social and economic problems and his broad experience in community activities insure the voters of the Seventh District a candidate who will honestly and ably serve them in the 81st Congress' (ibid).

"In the March 10, 1948, issue of the Daily People's World, we note that the 'Alameda County CIO Council voted endorsement last night for Dr. Buell Gallagher, pro-Wallace candidate for Congress in the Seventh District. Dr. Gallagher, endorsed previously by the AFL Central Labor Council and Building Trades Council, will run in the Democratic primary in June against Dyke Brown, the Truman candidate. Congressman from the Seventh District now is Republican John J. Allen, who voted for the 'Taft-Hartley law' (p. 3).

"Under date of February 10, 1951, Dr. Gallagher addressed a letter to the chairman of this committee detailing an analysis of the information reflected in the public files of the committee, and stating, 'at no time have I ever been a member of, or sympathizer with, the Communist Party; nor a member of, or sympathizer with, any organization which I knew or believed to be a front for communism.' The chairman, in a letter to Dr. Gallagher dated March 3, 1951, advised him that his analysis would be made a part of the committee records and quoted in any future releases."

"FEBRUARY 13, 1956.

"SUBJECT: JUDGE HUBERT T. DELANY (also spelled Delaney), national board of directors, NAACP, 1954.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"Hubert T. Delaney was a member of the Council on African Affairs, as shown in the following sources: Pamphlets entitled 'Affairs in the War,' 'Seeing Is Believing' (1947), 'For a New Africa,' (p. 36), '8 Million Demand Freedom' (inside back cover); leaflets headed 'The Job To Be Done' and 'What of Africa's Place in Tomorrow's World' (June 26, 1944). New Africa for December 1943 (p. 4) and a letterhead of the council dated May 17, 1945, contained the same information. Mr. Walter S. Steele testified in public hearings before the Committee on Un-American Activities July 21, 1947 (p. 135), that Judge Delaney was a member of the Council on African Affairs. According to the Daily

Worker of March 29, 1948 (p. 7), Judge Hubert T. Delaney was a member of the executive board of the council. The Daily Worker of April 28, 1947 (p. 12), named him as having signed a statement issued by the council.

"The Attorney General of the United States cited the Council on African Affairs as subversive and Communist (press releases of December 4, 1947, and September 21, 1948; also included on consolidated list released April 1, 1954).

"A 1939 membership list of the National Lawyers Guild, which was made available to the special Committee on Un-American Activities, contains the name of one Hobert T. Delaney, 30 Broad Street, New York City. The names of Hubert T. Delany appeared on a letterhead of the guild dated May 28, 1940, as director ex officio. The New York Guild Lawyer for September 1950 listed him as vice president of the New York chapter of the guild. A list of officers of the National Lawyers Guild (as of December 1949) contains the name of the Honorable Hubert T. Delaney in a list of members of the organization's executive board; he is so named in a list dated May 1950. Both of these lists were printed in a report on the National Lawyers Guild, prepared and published by the Committee on Un-American Activities September 17, 1950.

"Convention News of May 1941 (pp. 2 and 4), issued by the fifth annual convention of the National Lawyers Guild which was held May 29-June 1, 1941, in Detroit, Mich., named Hubert T. Delany as a member of the convention resolutions committee; he was also named in the same source as a member of the national executive board, National Lawyers Guild. Judge Delaney presided at an annual convention of the guild on Chicago, Ill., in 1951 (Daily People's World, October 18, 1951, p. 2); he also spoke before the guild in 1951, as reported in the Daily Worker of April 10, 1951, page 5. In the latter three sources, he was identified with the domestic relations court of New York City.

"The Daily Worker of October 7, 1952 (p. 3), reported that Judge Delany was to lead a workshop at the national conference on civil rights legislation and discrimination to be held in New York City, October 10-12, under the auspices of the National Lawyers Guild; a letterhead of the New York City chapter of the guild dated October 17, 1952, listed Hubert T. Delany as vice president. The Daily Worker of February 20, 1953 (p. 6), announced that he would speak at a panel session on civil rights and liberties, February 22, at the annual convention of the guild, February 20-23, in New York City. According to the Daily Worker of May 27, 1953 (p. 8), Hubert T. Delany was reelected vice president of the New York City chapter of the National Lawyers Guild at the annual membership meeting May 26. He was elected one of the vice presidents of the National Lawyers Guild, New York City chapter, for the years 1954-55, as reported in the Daily Worker of May 26, 1954 (p. 8).

"The National Lawyers Guild was cited as a Communist-front organization by the Special Committee on Un-American Activities in Report No. 131 dated March 29, 1944. In a report on the guild, prepared and released September 17, 1950, by the Committee on Un-

American Activities, it was shown that the National Lawyers Guild 'is the foremost legal bulwark of the Communist Party, its front organizations, and controlled unions' and 'since its inception has never failed to rally to the legal defense of the Communist Party and individual members thereof, including known espionage agents'.

"Hubert T. Delany was a member of the Lawyers' Committee of the American League for Peace and Democracy, as shown on their letterhead dated April 6, 1939. The American League for Peace and Democracy was cited as subversive and Communist by the Attorney General (press releases of June 1 and September 21, 1948; consolidated list of April 1, 1954); he had previously cited the organization as 'established in the United States * * * in an effort to create public sentiment to the interests of the Soviet Union' (CONGRESSIONAL RECORD, September 24, 1942, pp. 7683 and 7684). The Special Committee on Un-American Activities cited the American league as 'the largest of the Communist-front movements in the United States' (report of January 3, 1940).

"The catalog of the George Washington Carver School (winter term, 1947) contains the name of Judge Hubert T. Delany as a member of the board of directors of that school, cited by the Attorney General as 'an adjunct in New York City of the Communist Party' (press release of December 4, 1947; included on consolidated list of April 1, 1954).

"Hubert T. Delany was named as a representative individual who advocated lifting the arms embargo against Spain in a booklet entitled 'These Americans Say,' which was prepared and published by the coordinating committee to lift the embargo, cited as one of the number of groups set up during the Spanish Civil War by the Communist Party in the United States and through which the party carried on a great deal of agitation. (From a report of the Special Committee on Un-American Activities dated March 29, 1944.)

"A letterhead of the Lawyers' Committee on American Relations with Spain dated March 5, 1938, and a prospectus and review of the organization both name him as a member of that group.

"In a report dated March 29, 1944, the Special Committee on Un-American Activities had the following to say concerning the Lawyers' Committee on American Relations with Spain: 'When it was the policy of the Communist Party to organize much of its main propaganda around the civil war in Spain, the lawyers' committee * * * supported this movement.'

"A letterhead of the medical bureau and North American Committee To Aid Spanish Democracy dated July 6, 1938, contains the name of Judge Delany in a list of members of that group.

"During 1937 and 1938, the Communist Party wholeheartedly campaigned for support of the Spanish Loyalist cause recruiting men and setting up so-called relief organizations such as the medical bureau and North American Committee To Aid Spanish Democracy. (From report No. 1311 of the Special Committee on Un-American Activities dated March 29, 1944.)

"Hubert T. Delany was one of the sponsors of a testimonial dinner in honor of Ferdinand C. Smith, Communist Party member and national secretary of the National Maritime Union; identified as tax commis-

sioner, New York City, Judge Delany was listed by Labor Defender (issue of October 1935) as one of the individuals who signed a petition for the freedom of Angelo Herndon, a Communist."

"FEBRUARY 13, 1956.

"SUBJECT: Dr. ALGERNON D. BLACK, national board of directors, NAACP, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"Dr. Algernon D. Black was one of the sponsors of the Cultural and Scientific Conference for World Peace, arranged by the National Council of the Arts, Sciences, and Professions, March 25-27, 1949 (conference program, p. 12, and conference call). The Daily Worker of February 21, 1949 (p. 2), announced that he was a member of the program committee of that conference. Speaking of peace, edited report of the conference, March 25, 26, 27, 1949, listed Algernon Black as a speaker on A Warning Against Sectarian Prejudice, and gave biographical data concerning him (pp. 121, 139).

"In 1948 and 1949, Dr. Black signed statements of the National Council of the Arts, Sciences, and Professions (Daily Worker, Dec. 29, 1948, p. 2; letterhead received in January 1949; New York Star of January 4, 1949, p. 9, an advertisement). He spoke before the group in February 1949 (Daily Worker, Feb. 28, 1949, p. 2).

"The Committee on Un-American Activities, in its Review of the Scientific and Cultural Conference for World Peace arranged by the National Council of the Arts, Sciences, and Professions and held in New York City on March 25, 26 and 27, 1949, April 26, 1950, cited the National Council of the Arts, Sciences, and Professions as a Communist-front organization. In this same report the Committee on Un-American Activities cited the scientific and cultural conference as actually a supermobilization of the inveterate wheelhorses and supporters of the Communist Party and its auxiliary organizations.

"The call to a national conference on American policy in China and the Far East, held in January 1948, included the name of Dr. Algernon Black in the list of sponsors (Call, January 23-25, 1948, New York City); the conference was called by the Committee for a Democratic Far Eastern Policy. In the December 1949-January 1950 issue of Far East Spotlight, which is the official organ of the Committee for a Democratic Far Eastern Policy, Dr. Black answered a questionnaire issued by that committee, favoring recognition of the Chinese Communist government.

"The Attorney General of the United States cited the Committee for a Democratic Far Eastern Policy as a Communist organization in a letter furnished the Loyalty Review Board and released to the press by the United States Civil Service Commission April 27, 1949; redesignated April 27, 1953, pursuant to Executive Order No. 10450, and included on the April 1, 1954, consolidated list of organizations previously designated.

"The Daily Worker of June 21, 1948, reported that Algernon D. Black had signed a statement of the National Council of American-Soviet Friendship, calling for a conference with the Soviet Union; he signed an appeal of the same organization to the U.S. Government to end the cold war and arrange a conference with the Soviet Union (leaflet entitled 'End the Cold War—Get Together for Peace' which was dated December 1948); he signed a statement in praise of Henry Wallace's open letter to Stalin (May 1948), as shown in the pamphlet *How To End the Cold War and Build the Peace* (p. 9), prepared and released by the National Council of American-Soviet Friendship.

"The Attorney General cited the National Council of American-Soviet Friendship as subversive and Communist in letters released December 4, 1947, and September 21, 1948; redesignated April 27, 1953, and included on the April 1, 1954, consolidated list. The special Committee on Un-American Activities, in its report of March 29, 1944 (p. 156), cited the National Council of American-Soviet Friendship as 'in recent months, the Communist Party's principal front for all things Russian.'

"Dr. Black contributed an article to the pamphlet *We Hold These Truths* (p. 22), which was issued by the League of American Writers. He was named as a member of the executive committee of Film Audiences for Democracy in the June 1939 issue of *Film Survey*, official organ of Film Audiences, cited as a Communist-front organization by the special Committee on Un-American Activities (report No. 1311 of March 29, 1944, p. 150).

"The Attorney General cited the League of American Writers as subversive and Communist in letters furnished the Loyalty Review Board and released to the press by the U.S. Civil Service Commission June 1 and September 21, 1948; redesignated April 27, 1953, and included on the April 1, 1954, consolidated list. The organization was cited previously by the Attorney General as 'founded under Communist auspices in 1935 . . . in 1939 . . . began openly to follow the Communist Party line as dictated by the foreign policy of the Soviet Union.' (CONGRESSIONAL RECORD, September 24, 1942, pp. 7685 and 7686.) The special Committee on Un-American Activities, in its reports of January 3, 1940 (p. 9), June 25, 1942 (p. 19), and March 29, 1944 (p. 48), cited the League of American Writers as a Communist-front organization.

"A letterhead of the nonpartisan committee for the reelection of Congressman Vito Marcantonio, dated October 3, 1936, listed the name of Algernon D. Black as a member of that committee. The Special Committee on Un-American Activities, in its report dated March 29, 1944 (p. 122), cited the nonpartisan committee for the reelection of Vito Marcantonio as a Communist-front organization.

"Algernon Black was a member of the advisory board of the American Student Union, as shown in a pamphlet entitled 'Presenting the American Student Union.' The Special Committee on Un-American Activities, in its report dated January 3, 1939 (p. 80), cited the American Student Union as a Communist-front organization.

"A letterhead of the Veterans Against Discrimination of Civil Rights Congress of New York, dated May 11, 1946, listed the name of Alger-

non Black as one of the public sponsors of that organization. The Attorney General cited the Veterans Against Discrimination of Civil Rights Congress of New York as subversive in a letter released December 4, 1947; included on the April 1, 1954, consolidated list.

"Mr. Black signed an open letter of the National Federation for Constitutional Liberties, as shown in the booklet '800 Prominent Americans' (p. 16). The Attorney General cited the National Federation as subversive and Communist in letters released December 4, 1947, and September 21, 1948; redesignated April 27, consolidated list. The Attorney General cited the organization previously as 'part of what Lenin called the solar system of organizations, ostensibly having no connection with the Communist Party, by which Communists attempt to create sympathizers and supporters of their program.' The Special Committee on Un-American Activities in its report dated March 29, 1944 (p. 50), cited the National Federation for Constitutional Liberties as 'one of the viciously subversive organizations of the Communist Party.' The Committee on Un-American Activities, in its report of September 2, 1947 (p. 3), cited the National Federation as among a 'maze of organizations' which were 'spawned for the alleged purpose of defending civil liberties in general but actually intended to protect Communist subversion from any penalties under the law.'

"The printed program of the Greater New York Emergency Conference on Inalienable Rights, February 12, 1940, reveals the name of Algernon D. Black as vice chairman of the group. A letterhead of the American Russian Institute, received July 26, 1949, contains the name of Dr. Black as a member of the interchurch committee of that institute. The Special Committee on Un-American Activities, in its report dated March 29, 1944 (pp. 96 and 129), cited the Greater New York Emergency Conference on Inalienable Rights as a Communist front organization. The Attorney General cited the American Russian Institute as a Communist organization in a letter released April 27, 1949; redesignated April 27, 1953, and included on the April 1, 1954, consolidated list.

"Dr. Black was a member of the American Friends of Spanish Democracy (letterheads dated March 13, 1931, and February 21, 1938); and described as a representative individual in a booklet entitled 'These Americans Say' which was published by the Coordinating Committee to Lift the (Spanish) Embargo. The Special Committee on Un-American Activities, in its report dated March 29, 1944 (p. 82), cited the American Friends of Spanish Democracy as a Communist front organization. The Coordinating Committee to Lift the (Spanish) Embargo was cited by the Special Committee on Un-American Activities in its report dated March 29, 1944 (pp. 137 and 138), as one of a number of front organizations set up during the Spanish Civil War by the Communist Party in the United States and through which the party carried on a great deal of agitation.

"In a pamphlet entitled 'News You Don't Get' (dated Nov. 15, 1938), Algernon Black was named as one of those who signed the call to a conference on Pan-American democracy; a letterhead of the organization dated November 16, 1938, named him as one of the sponsors of

the conference. The Attorney General cited the Conference on Pan-American Democracy as subversive and Communist in letters released June 1 and September 21, 1948; redesignated April 27, 1953, pursuant to Executive Order No. 10450. The Special Committee on Un-American Activities, in its report dated March 29, 1944 (pp. 161 and 164), cited the Conference on Pan-American Democracy as a Communist front organization.

"Algernon Black signed a declaration of the Reichstag Fire Trial Anniversary Committee honoring Dimitrov, as shown in the New York Times of December 22, 1943 (p. 40). The Special Committee on Un-American Activities, in its report of March 29, 1944 (pp. 112 and 156), cited the Reichstag Fire Trial Anniversary Committee as a Communist front organization.

"Dr. Black signed an open letter in defense of Harry Bridges. (See Daily Worker of July 19, 1942, p. 4.) Letterheads of the Citizens Victory Committee for Harry Bridges dated June 8, 1943, and January 10, 1944, listed Algernon Black as a committee member or sponsor of that group. The open letter in defense of Harry Bridges was cited as a Communist front organization by the Special Committee on Un-American Activities in its report of March 29, 1944 (pp. 87, 112, 129, 166). The Citizens' Committee for Harry Bridges was cited as Communist by the Attorney General in a letter released April 27, 1949; redesignated April 27, 1953, and included on the April 1, 1954, consolidated list. The Special Committee on Un-American Activities, in its report of March 29, 1944 (pp. 90 and 94), cited the Citizens' Committee for Harry Bridges as a Communist front organization.

"The Daily Worker of March 29, 1951 (p. 9), reported that Dr. Algernon D. Black signed a letter of the American Committee for Protection of Foreign Born attacking the McCarran Act. Algernon D. Black was shown as a sponsor of the American Committee for Protection of Foreign Born in the Daily Worker, April 4, 1951 (p. 8), a leaflet: 'Call—Moss Meeting and Conference,' October 27, 1951, Dearborn, Mich., and a photostatic copy of an undated letterhead of the 20th anniversary national conference * * *, U. E. Hall, Chicago, Ill. (Dec. 8-9, 1951). The Daily Worker of August 10, 1950 (p. 5), reported that Dr. Algernon Black signed a statement of the American Committee Against Denaturalization.

"The Attorney General cited the American Committee for Protection of Foreign Born as subversive and Communist in letters released June 1 and September 21, 1948; redesignated April 27, 1953, and included on the April 1, 1954, consolidated list. The special Committee on Un-American Activities, in its report of March 29, 1944 (p. 155), cited the American Committee for Protection of Foreign Born as 'one of the oldest auxiliaries of the Communist Party in the United States.'

"On June 13, 1949, the Daily Worker reported that Dr. Black was one of the sponsors of an organization formed to oppose the Mundt-Nixon anti-Communist bill; a press release of the National Committee to Defeat the Mundt Bill, dated June 15, 1949, revealed the same information. The Committee on Un-American Activities, in its report on the National Committee to Defeat the Mundt bill dated January

2, 1951, cited that organization as 'a registered lobbying organization which has carried out the objectives of the Communist Party in its fight against antissubversive legislation.'

"A letterhead of the Voice of Freedom Committee dated June 18, 1947, listed Algernon D. Black as a sponsor of that organization. An invitation to a dinner held under the auspices of the group, January 21, 1948, listed him as a member of the dinner committee. He signed a petition of the organization as shown by a leaflet publisher by the Voice of Freedom Committee. The Attorney General included the Voice of Freedom Committee on his April 1, 1954, consolidated list of organizations previously designated.

"Algernon D. Black, New York Ethical Culture Society, signed an open letter of the Conference on Peaceful Alternatives to the Atlantic Pact to Senators and Congressmen urging defeat of President Truman's arms program, as shown by a letterhead dated August 21, 1949.

"The Committee on Un-American Activities, in its report on the Communist peace offensive, April 1, 1951 (p. 56), cited the Conference for Peaceful Alternatives to the Atlantic Pact as a meeting called by the Daily Worker in July 1949, to be held in Washington, D.C., and as having been instigated by Communists in the United States (who) did their part in the Moscow campaign.

"The Daily Worker of December 10, 1952 (p. 4), listed Dr. Algernon D. Black as a signer of an appeal to President Truman requesting amnesty for leaders of the Communist Party convicted under the Smith Act."

"FEBRUARY 13, 1956.

"SUBJECT: DR. RALPH BUNCHE, national board of directors, NAACP, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"Dr. Ralph Bunche was a member of the executive board of the Washington committee, Southern Conference for Human Welfare, as shown on their letterhead of June 4, 1947. The special Committee on Un-American Activities cited the Southern Conference for Human Welfare as a Communist-front organization in its report of March 29, 1944. In 1947 the Committee on Un-American Activities released a report on the conference, in which it was cited as a Communist-front organization which sought to 'attract southern liberals on the basis of its seeming interest in the problems of the South,' although its 'professed interest in southern welfare' was 'simply an expedient for larger aims serving the Soviet Union and its subservient Communist Party in the United States' (Report No. 592 of June 12, 1947).

"Ralph Bunche was a sponsor of the Conference on Civil Rights of the Washington Committee for Democratic Action, April 20-21, 1940, as shown by the conference call, page 4. A letterhead of the Washington Committee for Democratic Action dated April 28, 1940, named Dr. Bunche as one of the sponsors of that group.

"The Washington Committee for Democratic Action was cited as

subversive and Communist by the Attorney General of the United States in letters to the Loyalty Review Board, released December 4, 1947, and September 21, 1948. The organization was redesignated by the Attorney General, April 27, 1953, pursuant to Executive Order No. 10450, and included in the April 1, 1954, consolidated list of organizations previously designated. The Attorney General had previously cited the group as an affiliate or local chapter of the National Federation for Constitutional Liberties (CONGRESSIONAL RECORD, Sept. 24, 1942, pp. 7688 and 7689). The special Committee on Un-American Activities cited the organization as successor in Washington to the American League for Peace and Democracy and an affiliate of the national federation (reports of June 25, 1942, and Mar. 29, 1944).

"Official proceedings of the National Negro Congress for 1936, pages 5 and 40, named Dr. Ralph Bunche, Washington, D.C., as a member of the presiding committee and a member of the national executive council of that organization.

"The Special Committee on Un-American Activities cited the National Negro Congress as a Communist-front movement in the United States among Negroes, and reported that 'the officers of the National Negro Congress are outspoken Communist sympathizers, and a majority of those on the executive board are outright Communists' (report of January 3, 1939). The Attorney General cited the National Negro Congress as a Communist-front organization (CONGRESSIONAL RECORD, September 24, 1942, pp. 7687 and 7688; press releases of December 4, 1947, and September 21, 1948; consolidated list of cited organizations, dated April 1, 1954).

"The Washington Post and Times Herald, May 29, 1954, p. 6, reported that 'A Federal loyalty board announced today that it has unanimously cleared Dr. Ralph J. Bunche of any and all charges,' the article quoted the official announcement as follows:

"The full board had its second meeting with Dr. Bunche yesterday following which it unanimously reached the conclusion that there is no doubt as to the loyalty of Dr. Bunche to the Government of the United States.

"This conclusion has been forwarded to the Secretary of State for transmittal to the Secretary General of the U.N. At the same time it has been informally transmitted to Dr. Bunche."

"Reference to the loyalty board's clearance of Dr. Bunche is found also in the Washington Evening Star, May 28, 1954, p. A-1."

"FEBRUARY 13, 1956.

"SUBJECT: ALFRED BAKER LEWIS, national board of directors, NAACP, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"On July 11, 1942, the National Federation for Constitutional Liberties addressed an open letter to the President of the United States urging him to reconsider Attorney General Francis Biddle's order to

deport Harry Bridges; the letter also stated that: 'It is equally essential that the Attorney General's ill-advised, arbitrary, and unwarranted findings relative to the Communist Party be rescinded.' Alfred Baker Lewis, executive board, National Association for the Advancement of Colored People, and executive board member, Union for Democratic Action, New York, N.Y., signed the open letter, as shown in the pamphlet entitled '800 Prominent Americans Ask President To Rescind Biddle Decisions,' published September 11, 1942, by the National Federation of Constitutional Liberties and incorporating the open letter in full. The open letter, together with a list of individuals who signed it, appeared in the Daily Worker on July 19, 1942 (p. 4).

"The Attorney General of the United States cited the National Federation for Constitutional Liberties as 'Part of what Lenin called the solar system of organizations, ostensibly having no connection with the Communist Party, by which Communists attempt to create sympathizers and supporters of their program,' and as subversive and Communist. (CONGRESSIONAL RECORD, September 24, 1942, p. 7687; and press releases of December 4, 1947, and September 21, 1948, respectively; also included in consolidated list released April 1, 1954.) The Special Committee on Un-American Activities cited the federation as one of the viciously subversive organizations of the Communist Party (report of March 29, 1944; also cited in reports of June 25, 1942, and January 2, 1943). It was also cited by the Committee on Un-American Activities as intended to protect Communist subversion from any penalties under the law (Report No. 1115 of September 2, 1947).

"An undated letterhead of the League for Mutual Aid, 104 Fifth Avenue, New York City, contained the name of Alfred Baker Lewis in a list of members of the organization's advisory committee. The league was cited as a Communist enterprise by the Special Committee on Un-American Activities in Report No. 1311 of March 29, 1944.

"Greetings and best wishes for success to the second national Negro congress' were contained in the printed annual program of that congress, sent by A. Philip Randolph, chairman, and Alfred Baker Lewis, secretary, Negro Work Committee of the Socialist Party. (Printed annual program, second national Negro congress, Philadelphia, Pa., October 15, 16, and 17, 1937, p. 61). The National Negro Congress was cited as an important sector of the democratic front, sponsored and supported by the Communist Party; and later, as subversive and Communist. (CONGRESSIONAL RECORD, September 24, 1942, pp. 7687 and 7688; and press releases of December 4, 1947 and September 21, 1948; also included on consolidated list of April 1, 1954.) The Special Committee on Un-American Activities cited the Congress as the Communist-front movement in the United States among Negroes (report of January 3, 1939; also cited in reports of January 3, 1940; June 25, 1942; and March 29, 1944)."

"FEBRUARY 13, 1956.

"SUBJECT: DR. JAMES J. McCLENDON, national board of directors, national health committee, NAACP, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"The Daily Worker of March 18, 1945 (p. 2), and an undated leaflet, The Only Sound Policy for a Democracy, named Dr. James J. McClendon as one of the signers of a statement, sponsored by the National Federation for Constitutional Liberties, which supported the War Department's order on granting commissions to members of the Armed Forces who have been members of or sympathetic to the views of the Communist Party. Dr. McClendon was identified as president of the Detroit National Association for the Advancement of Colored People. Dr. J. J. McClendon was one of the sponsors of the National Federation for Constitutional Liberties, as shown by the program, Action Conference for Civil Rights, held in Washington, D. C., April 19-20, 1940, and November 6, 1940.

"The National Federation for Constitutional Liberties was cited as subversive and Communist by the United States Attorney General in press releases dated December 4, 1947, and September 21, 1948; also included in his consolidated list of April 1, 1954. The Attorney General described the organization as "part of what Lenin called the solar system of organizations, ostensibly having no connection with the Communist Party, by which Communists attempt to create sympathizers and supporters of their program" (CONGRESSIONAL RECORD, September 24, 1942, p. 7687). The Special Committee on Un-American Activities stated that "There can be no reasonable doubt about the fact that the National Federation for Constitutional Liberties regardless of its high-sounding name—is one of the viciously subversive organizations of the Communist Party" (special committee report, March 29, 1944, p. 50); also cited in reports, June 25, 1942 (p. 20), and January 2, 1943 (pp. 9 and 12).

"Dr. James J. McClendon was named in the Daily Worker of March 16, 1942 (pp. 1 and 4), and on a letterhead dated April 2, 1942, as one of the sponsors of the National Free Browder Congress.

"The National Free Browder Congress was cited as a Communist front which arranged to meet March 28-29, 1942. Earl Browder was general secretary of the Communist Party, United States of America, who had been convicted and sentenced to Atlanta Federal Penitentiary for passport fraud. (Special Committee on Un-American Activities, report, March 29, 1944 (pp. 69, 87, and 132.)

"Dr. James McClendon was one of the sponsors of the sesquicentennial bill of rights celebration, held under the auspices of the Michigan Civil Rights Federation, Detroit, Mich., December 1-2, 1939, as shown by the call of conference. Dr. James J. McClendon was one of the sponsors of a statewide conference, held under the auspices of the Michigan federation in Detroit, Mich., September 12, 1943, as shown by call of the conference. He was identified as president of the Detroit chapter of the National Association for the Advancement of Colored People.

"The Michigan Civil Rights Federation was cited by the Attorney General of the United States as 'an affiliate of the Communist front, the National Federation for Constitutional Liberties; and as subversive and Communist organization which has been succeeded by and now operates as the Michigan chapter of the Civil Rights Congress' (CON-

GRESSIONAL RECORD, September 24, 1942, p. 7687; and press releases of December 4, 1947, June 1 and September 21, 1948; also included in his consolidated list of organizations, dated April 1, 1954). The Special Committee on Un-American Activities and the Committee on Un-American Activities cited the Michigan Civil Rights Federation as a Communist-front organization. (From Report No. 1311 of the Special Committee on Un-American Activities, dated March 29, 1944; and Report No. 1115 of the Committee on Un-American Activities, dated September 2, 1947, p. 3.)"

"FEBRUARY 13, 1950.

"SUBJECT: EARL B. DICKERSON, national board of directors, national legal committee, NAACP, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"According to the Daily Worker of February 28, 1949 (p. 9), Earl Dickerson, attorney, Illinois, was one of the signers of a statement defending the 12 Communist leaders. He signed a statement in behalf of the attorneys in the Communist cases as shown by the July 31, 1950, issue of the Daily Worker (p. 9). This same information was shown in the February 1, 1950, issue of the Daily Worker (p. 3). As shown by the Daily People's World of May 12, 1950 (p. 12), Earl B. Dickerson was a signer of a statement to the United Nations in behalf of the Communist cases.

"Earl B. Dickerson protested approval of the Smith Act by the Supreme Court as 'having a disastrous impact upon * * * struggle of Negro people' (Daily Worker, October 1, 1951, p. 1). He filed a petition with the clerk of the United States Supreme Court supporting the pending application for a hearing on the constitutionality of the Smith Act as shown by the Daily Worker, October 4, 1951 (p. 15). Mr. Dickerson was identified in this source as a Negro attorney in Illinois. He spoke against the Smith Act according to the February 12, 1952 issue of the Daily People's World (p. 3), and was co-author of a memorandum to the Supreme Court 'on the menace of the Smith Act to the Negro people' (Daily People's World, July 15, 1952, p. 1). Earl B. Dickerson, president, National Lawyers Guild, Chicago, was a signer of an appeal to President Truman requesting amnesty for leaders of the Communist Party convicted under the Smith Act (Daily Worker, December 10, 1952, p. 4). As shown by the Daily Worker, December 29, 1953 (p. 8) and the Worker, January 3, 1954 (p. 6), Earl B. Dickerson was one of 39 prominent Midwest citizens signing a plea for Christmas amnesty for Communist leaders convicted under the Smith Act, which was wired to President Eisenhower. He was one of the initiators of an appeal for reduced bail for Claude Lightfoot, Illinois Communist leader, indicated under a section of the Smith Act as shown by the September 12, 1954, issue of the Worker (p. 16).

"According to the December 25, 1952 issue of the Daily Worker (p. 8), Earl D. Dickerson was a signer of an open letter to President Truman asking clemency for the Rosenbergs. The Daily People's World of March 13, 1953 (p. 3), reported that Earl B. Dickerson con-

tributed a statement to the pamphlet, *The Negro People Speak Out on the Rosenbergs*, distributed by volunteers for the East Bay Committee To Save the Rosenbergs, Oakland, California.

"Earl B. Dickerson was a signer of an appeal to the Greek Government protesting the court marital of Greek maritime unionists as shown by the *Daily Worker*, August 19, 1952 (p. 1).

"Earl B. Dickerson was listed in the spring 1943 (p. 22) and fall session 1943 (p. 27) catalogs of the Abraham Lincoln School as a member of the board of directors. He was named in the same source as a guest lecturer at the school (p. 19).

"The Attorney General of the United States cited the Abraham Lincoln School as an adjunct of the Communist Party in a letter to the Loyalty Review Board, released December 4, 1947. The Attorney General redesignated the school April 27, 1953, pursuant to Executive Order No. 10450, and included it on the April 1, 1954, consolidated list of organizations previously designated. The Special Committee on Un-American Activities, in its report of March 29, 1944 (p. 82), cited the Abraham Lincoln School as successor of the Workers School as a Communist educational medium in Chicago.

"A pamphlet entitled 'For a New Africa' (containing the proceedings of the conference on Africa, New York, April 14, 1944) names Earl B. Dickerson as a member of the National Negro Congress.

"The National Negro Congress was cited as subversive and Communist by the Attorney General in letters released December 4, 1947, and September 21, 1948; redesignated April 27, 1953, and included on the April 1, 1954, consolidated list. The organization was cited previously by the Attorney General as a Communist-front group (CONGRESSIONAL RECORD, Sept. 24, 1942, pp. 7687 and 7688). The Special Committee on Un-American Activities, in its report of January 3, 1939 (p. 81), cited the National Negro Congress as 'the Communist-front movement in the United States among Negroes.'

"He was a member of the Council on African Affairs as shown in a pamphlet entitled 'Eight Million Demand Freedom,' and the pamphlet *For a New Africa* (p. 36). Earl B. Dickerson is listed as a member of the Council on African Affairs in a leaflet, issued by the organization, *The Job To Be Done*, a leaflet entitled 'What of Africa's Place in Tomorrow's World?' a pamphlet entitled 'Seeing Is Believing' (1947), and a letterhead of the group, dated May 17, 1945, and a pamphlet, *Africa in the War*.

"The Attorney General cited the Council on African Affairs as subversive and Communist in letters released December 4, 1947, and September 21, 1948; redesignated April 27, 1953, and included on the April 1, 1954, consolidated list.

"The name of Earl Dickerson, of 35 South Dearborn Street, Chicago, Ill., appears on a 1939 membership list of the National Lawyers' Guild on file with this committee. In 1949 he was president of the Chicago chapter of the guild and chairman at a meeting on anti-Communist legislation, as shown in the *Daily Worker* of March 15, 1949 (p. 8); in the same year he attacked the Marshall plan as shown in the *Daily Worker* of July 19, 1949 (p. 5), in which source he was identified as

president of the Chicago chapter of the guild; he participated in a discussion entitled 'Status of Civil Liberties' fifth annual convention, National Lawyers' Guild, Book-Cadillac Hotel, Detroit, Mich., May 29-June 1, 1941, as shown by the convention program printed in *Convention News*, May 1941 (p. 2), published by the guild. This same *Convention News* (pp. 3 and 4) listed him as a member of the convention nominations committee of the fifth national convention of the National Lawyers' Guild. He submitted a report of the guild, denouncing lynching and discrimination, as shown in the *Daily Worker*, November 30, 1942 (p. 1). As shown by the October 15, 1951, issue of the *Daily Worker* (p. 1), Earl B. Dickerson was president of the Chicago chapter of the National Lawyers' Guild; he spoke at the national convention of the organization in Chicago. The October 18, 1951, issue of the *Daily People's World* (p. 2), reported that Earl B. Dickerson was elected president of the National Lawyers' Guild. He was shown as president of the National Lawyers' Guild in the *Daily Worker*, January 25, 1952 (p. 1), and February 20, 1953 (p. 6), and the *Daily People's World*, January 25, 1952 (p. 8). The January 18, 1952, issue of the *Daily People's World* (p. 3) reported that Earl B. Dickerson was to speak on the Smith Act, the Constitution, and You, at a gathering of the San Francisco chapter of the National Lawyers' Guild on February 1, 1952. The *Daily Worker* of February 24, 1953 (p. 6), reported that Earl Dickerson, president of the National Lawyers' Guild, addressed the annual convention of the group held February 20-23, at the Park-Sheraton Hotel, New York City, and stated that 'a new foreign policy is needed if the drive against liberties is to be halted.' The *Daily People's World* of July 6, 1953 (p. 3), announced that he was to be honored by the Los Angeles-Hollywood chapter of the National Lawyers' Guild at a luncheon. The *Daily Worker* of August 28, 1953 (p. 2), reported that Earl B. Dickerson, president of the National Lawyers' Guild, issued a statement opposing the American Bar Association's call for disbarment of Communist lawyers. As shown by the September 6, 1953, issue of the *Worker* (p. 6), Earl Dickerson protested the placing of the National Lawyers' Guild on the list of subversive organizations by the Attorney General.

"The special Committee on Un-American Activities, in its report of March 29, 1944 (p. 149), cited the National Lawyers' Guild as a Communist-front organization. The Committee on Un-American Activities, in its report on the Nations Lawyers' Guild, September 17, 1950, cited the group as Communist front which 'is the foremost legal bulwark of the Communist Party, its front organizations, and controlled unions' and which 'since its inception has never failed to rally to the legal defense of the Communist Party and individual members thereof, including known espionage agents.'

"One Earl Dickerson (with no middle initial shown) spoke at the morning session of the Congress on Civil Rights which was held in Detroit, Mich., April 27-28, 1946, as shown in the program, Congress on Civil Rights (p. 1); Earl B. Dickerson signed a statement of the Civil Rights Congress which was in defense of Gerhart Eisler, according to the *Daily Worker* of February 28, 1947 (p. 2); he was one of the

sponsors of the National Emergency Conference for Civil Rights which was held in New York City on July 19, 1948, according to the Daily Worker of July 12, 1948 (p. 4); a photostat of a letterhead of the Civil Rights Congress, Illinois, dated December 18, 1948, listed Earl Dickerson as a sponsor. As shown by the Daily Worker of November 1, 1950 (p. 4), Earl B. Dickerson was a sponsor of the Civil Rights Congress. A handbill, 'Dodge Local 3 Supports FEPC Rally,' listed Earl B. Dickerson as one of those who would speak at a rally to be held under partial auspices of the Civil Rights Congress of Michigan on April 16, 1950.

"The Attorney General cited the Civil Rights Congress as subversive and Communist in letters released December 4, 1947, and September 21, 1948; redesignated April 27, 1953, and included on the April 1, 1954, consolidated list. The Committee on Un-American Activities, in its report of September 2, 1947 (pp. 2 and 19), cited the Civil Rights Congress as an organization formed in April 1948 as a merger of two other Communist-front organizations (International Labor Defense and the National Federation for Constitutional Liberties); 'dedicated not to the broader issues of civil liberties, but specifically to the defense of individual Communists and the Communist Party' and 'controlled by individuals who are either members of the Communist Party or openly loyal to it.'

"According to the printed program of the Cultural and Scientific Conference for World Peace (p. 14), Earl B. Dickerson was one of the sponsors of this conference which was held in New York City, March 27-27, 1949, under the auspices of the National Council of the Arts, Sciences, and Professions; he signed a statement of the council which was reprinted in the CONGRESSIONAL RECORD of July 14, 1949 (p. 9620). Earl B. Dickerson was a signer of a Resolution Against Atomic Weapons as shown by a mimeographed list of signers attached to a letterhead of the National Council of the Arts, Sciences, and Professions dated July 28, 1950. Mr. Dickerson signed a statement to the American people, 'We uphold the right of all citizens to speak for peace' released by the National Council of the Arts, Sciences, and Professions, as shown by the handbill, 'Halt the Defamers Who Call Peace Un-American'. He spoke at a conference on equal rights for Negroes in the arts held by the New York Council of the National Council of the Arts, New York City, November 10, 1951, according to the November 7, 1951 (p. 3) and November 14, 1951 (p. 7), issues of the Daily Worker. The Daily Worker of June 2, 1952 (p. 3), listed Earl B. Dickerson as one of the endorsers of the national council resolution calling for a hearing on Tunisia's demands in the United Nations. He spoke at a conference for equal rights for Negroes in the Arts, Sciences, and Professions held by the Southern California Council of the Arts, Sciences, and Professions, on June 14, 1952, in Los Angeles (Daily Worker, June 20, 1952, p. 7).

"The Committee on Un-American Activities, in its Review of the Scientific and Cultural Conference for World Peace, April 19, 1949 (p. 2), cited the National Council of the Arts, Sciences, and Professions

as a Communist-front organization. In this same report the committee cited the Scientific and Cultural Conference for World Peace as a Communist front which 'was actually a supermobilization of the inveterate wheelhorses and supporters of the Communist Party and its auxiliary organizations.'

'Earl B. Dickerson was a national sponsor of the Spanish Refugee Appeal of the Joint Anti-Fascist Refugee Committee, as shown by letterheads of the group dated February 26, 1946, February 3, 1948, May 18, 1951, and January 5, 1953. He signed an open letter of the organization to President Truman on Franco Spain as shown by a letterhead and mimeographed letter of April 28, 1949. He signed a petition of the Spanish Refugee Appeal of the Joint Anti-Fascist Refugee Committee to President Truman 'to bar military aid to or alliance with fascist Spain' as shown by a mimeographed petition, attached to a letterhead of the group dated May 18, 1951.

'The Attorney General cited the Joint Anti-Fascist Refugee Committee as subversive and Communist in letters released December 4, 1947, and September 21, 1948; redesignated April 27, 1953, and included on the April 1, 1954, consolidated list. The Special Committee on Un-American Activities, in its report of March 29, 1944 (p. 174), cited the Joint Anti-Fascist Refugee Committee as a Communist-front organization.

'Mr. Dickerson was chairman of the Illinois Legislative and Defense Committee, of the International Labor Defense, as shown in Equal Justice, September, 1939 (p. 3). He spoke before the International Labor Defense, together with Earl Browder, according to the Daily Worker of October 1, 1942 (p. 5); October 6, 1942 (p. 5); and October 11, 1942 (p. 3). The pamphlet Victory in Oklahoma, October 1943, back cover, listed Earl B. Dickerson as a member of the National Committee of the International Labor Defense.

'The Attorney General cited the International Labor Defense as subversive and Communist in letters released June 1 and September 21, 1948; redesignated April 27, 1953, and included on the April 1, 1954, consolidated list. The organization was cited previously by the Attorney General as the 'legal arm of the Communist Party,' (CONGRESSIONAL RECORD, September 24, 1942, p. 7687). The Committee on Un-American Activities, in its report of September 2, 1947 (pp. 1 and 2), cited the International Labor Defense as 'part of an international network of organizations for the defense of Communist lawbreakers.'

'Earl B. Dickerson was a speaker at the Conference on Constitutional Liberties, the founding conference of the National Federation for Constitutional Liberties, as shown in the printed program, Call to a Conference, page 2, June 7, 1940.

'The Attorney General cited the Conference on Constitutional Liberties in America as a conference as a result of which was established the National Federation for Constitutional Liberties, 'part of what Lenin called the solar system of organizations, ostensibly having no connection with the Communist Party, by which Communists attempt to create sympathizers and supporters of their program' (CONGRESSIONAL RECORD, Sept. 24, 1942, p. 7687). The Special Committee on

Un-American Activities, in its report of March 29, 1944 (p. 102), cited the conference as 'an important part of the solar system of the Communist Party's front organizations.'

'The program and call to a national conference of the American Committee for Protection of Foreign Born, held in Cleveland, Ohio, October 25 and 26, 1947, listed Earl B. Dickerson as one of the sponsors of the conference; he was one of the sponsors of the sixth national conference, which was held in Cleveland, May 9 and 10, 1942, as shown in a leaflet of the conference, page 4. In the latter source, Mr. Dickerson was identified as a member of the President's Committee on Fair Employment Practices. Earl Dickerson was a sponsor of the American Committee for Protection of Foreign Born as shown by a 1950 letterhead, an undated letterhead (received for files, July 11, 1950), an undated letterhead (distributing a speech of Abner Green at the conference of the American Committee for Protection of the Foreign Born of December 2-3, 1950), and a letterhead of the Midwest Committee for Protection of Foreign Born (April 30, 1951). Mr. Dickerson, identified as president of the Chicago Urban League, was a sponsor of a dinner given by the Midwest Committee for the Protection of Foreign Born for Pearl Hart (Daily Worker, Apr. 6, 1950, p. 4). A letterhead of the sixth annual conference of the Midwest Committee for the Protection of the Foreign Born dated May 16, 1954, Chicago, listed Earl B. Dickerson as a sponsor.

'The Attorney General cited the American Committee for Protection of Foreign Born as subversive and Communist in letters released June 1 and September 21, 1948; redesignated April 27, 1953, and included on the April 1, 1954, consolidated list. The Special Committee on Un-American Activities in its report of March 29, 1944 (p. 155), cited the American Committee for Protection of Foreign Born as 'one of the oldest auxiliaries of the Communist Party in the United States.'

'In 1942 Earl B. Dickerson was a patron of the Congress of American-Soviet Friendship, as shown on a letterhead of the congress, dated October 27, 1942; he was named in Soviet Russia Today (December 1942 issue, p. 42) as one of the sponsors of the Congress of American-Soviet Friendship; the call to the Congress of American-Soviet Friendship, November 6-8, 1943, listed Earl B. Dickerson among the sponsors. He signed a statement of the National Council of American-Soviet Friendship, praising Wallace's open letter to Stalin, May 1948, as shown in a pamphlet, How To End the Cold War and Build the Peace, page 9. He was identified in the last-named source as an attorney at law, Chicago. A photostatic copy of a letterhead of the Chicago Council of American-Soviet Friendship dated September 17, 1951, listed Earl B. Dickerson as a sponsor of that group. A photostat of a letter of the national council dated March 19, 1952, listed Mr. Dickerson as a sponsor.

'The Attorney General cited the National Council of American-Soviet Friendship as subversive and Communist in letters released December 4, 1947, and September 21, 1948; redesignated April 27, 1953, and included on the April 1, 1954, consolidated list. The Special

Committee on Un-American Activities, in its report of March 29, 1944 (p. 156), cited the National Council as 'in recent months, the Communist Party's principal front for all things Russian.'

"The Daily Worker of October 21, 1942 (p. 1), named Earl B. Dickerson among the list of members of the National Emergency Committee To Stop Lynching. He signed an appeal to lift the Spanish embargo, which appeal was made by the Negro People's Committee to Aid Spanish Democracy, according to the Daily Worker of February 8, 1939 (p. 2). He contributed to the June 22, 1943, issue of New Masses (p. 9). He signed a petition of the Citizens' Committee to Free Earl Browder, as shown in an official leaflet of the organization.

"The National Emergency Committee To Stop Lynching was cited by the Special Committee on Un-American Activities as a Negro Communist-front organization, whose secretary was Ferdinand C. Smith, high in the circles of the Communist Party (report, March 29, 1944, p. 180).

"The Special Committee on Un-American Activities, in its report of March 29, 1944 (p. 180), cited the Negro People's Committee To Aid Spanish Democracy as a Communist-front organization.

"New Masses was cited as a Communist periodical by the Attorney General (CONGRESSIONAL RECORD, Sept. 24, 1942, p. 7688), and the Special Committee on Un-American Activities (report, Mar. 29, 1955, pp. 48 and 75).

"The Citizens' Committee To Free Earl Browder was cited as Communist by the Attorney General in a letter dated April 27, 1949; redesignated April 27, 1953, and included on the April 1, 1954, consolidated list. The organization was cited previously by the Attorney General as a Communist organization (CONGRESSIONAL RECORD, Sept. 24, 1942, p. 7687). The Special Committee on Un-American Activities, in its report of March 29, 1944 (pp. 6 and 55), cited the Citizens' Committee To Free Earl Browder as follows: When Earl Browder (then general secretary, Communist Party) was in Atlanta Penitentiary serving a sentence involving his fraudulent passports, the Communist Party's front which agitated for his release was known as the Citizens' Committee To Free Earl Browder.

"An open letter demanding discharge of Communist Party defendants in Fulton and Livingston Counties contained the name of Earl B. Dickerson in the list of persons who signed according to the Daily Worker of September 24, 1940, page 5. He was attorney for Eugene Dennis, general secretary, Communist Party, as shown in the Daily Worker of November 19, 1947, page 7, being identified in this source as a former member of the city council, Chicago. Reference to Earl Dickerson as attorney for Eugene Dennis appears in the Worker, November 30, 1947, page 4; the Daily Worker of January 15, 1948, page 5; and the Daily Worker of October 27, 1948, page 10, in which source he is identified as a Negro leader, of Chicago.

"Earl B. Dickerson was a sponsor of the American Peace Crusade, Illinois assembly, as shown by a letterhead dated April 12, 1951, the Illinois Peace Crusade, May 1951 (p. 4), and a photostat of a letterhead dated June 21, 1952. He was a sponsor of the American People's

Congress and Exposition for Peace, held by the American Peace Crusade in Chicago, Ill., June 29, 30, and July 1, 1951, as shown by a leaflet, An Invitation to American Labor To Participate in a Peace Congress, the Call to the American People's Congress, and the leaflet, American People's Congress * * * Invites You To Participate in a National Peace Competition, June 20, 1951, Chicago, Ill. He was a sponsor of a contest held by the American Peace Crusade for songs, essays, and paintings advancing the theme of world peace as reported in the Daily Worker, May 1, 1951 (p. 11).

"The Attorney General included the American Peace Crusade on his January 22, 1954, list of organizations designated pursuant to Executive Order No. 10450, and on the April 1, 1954, consolidated list. The Committee on Un-American Activities, in its statement issued on the March of Treason, February 19, 1951, and report on the Communist Peace Offensive April 1, 1951 (p. 51), cited the American Peace Crusade as an organization which the Communists established as a new instrument for their peace offensive in the United States and which was heralded by the Daily Worker with the usual bold headlines reserved for projects in line with the Communist objectives.

"Masses and Mainstream for February 1952 (pp. 52-56) listed Earl B. Dickerson as co-author of an *amici curiae* brief to the Supreme Court supporting an appeal for a rehearing of its decision upholding the Smith Act, dated September 27, 1951.

"According to the April 30, 1950, issue of the Worker (p. 15), Earl B. Dickerson was a sponsor of the Midcentury Conference for Peace, cited by the Committee on Un-American Activities as a meeting held in Chicago, May 29 and 30, 1950, by the Committee for Peaceful Alternatives to the Atlantic Pact and as having been 'aimed at assembling as many gullible persons as possible under Communist direction and turning them into a vast sounding board for Communist propaganda' (report on Communist peace offensive, Apr. 1, 1951, p. 58).

"Earl B. Dickerson was a sponsor of the National Committee To Defeat the Mundt Bill as shown by the pamphlet, Hey, Brother, There's a Law Against You (p. 2); a release of June 15, 1949 (p. 2), and a photostat of a letterhead dated May 5, 1950. He signed a statement of the organization according to the Daily Worker of April 3, 1950 (p. 4).

"The Committee on Un-American Activities, in its report on the National Committee To Defeat the Mundt Bill, December 7, 1950, cited the organization as 'a registered lobbying organization which has carried out the objectives of the Communist Party in its fight against antisubversive legislation.'

"Earl B. Dickerson signed a letter defending the 12 Communist leaders, as shown on a letterhead, dated January 7, 1949; he later signed a statement asking for the release of the Communist leaders, as shown in the Daily Worker of November 8, 1949 (p. 6). He signed a brief on behalf of the attorneys who represented the Communist leaders, as shown in the Daily Worker of November 2, 1949 (p. 2); he signed a statement on behalf of the attorneys, as shown in the Daily

Worker of December 7, 1949 (p. 5); he represented the attorneys who represented the 11 Communist leaders, according to the Daily Worker of January 24, 1950 (p. 3)."

"FEBRUARY 13, 1956.

"SUBJECT: BENJAMIN E. MAYS, national board of directors, NAACP, 1954.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"The Daily Worker, March 4, 1948 (p. 2), named Benjamin E. Mays as one of the signers of a letter in behalf of Communist deportation cases, which was sponsored by the American Committee for Protection of Foreign Born. A letterhead of the group contained his name as one of the sponsors (letterhead December 11 and 12, 1948).

"The Attorney General of the United States cited the American Committee for Protection of Foreign Born as subversive and Communist in letters furnished the Loyalty Review Board and released to the press by the U.S. Civil Service Commission June 1 and September 21, 1948. The group was redesignated by the Attorney General April 29, 1953, pursuant to Executive Order No. 10450. The Special Committee on Un-American Activities, in its report of March 29, 1944 (p. 155), cited the committee as 'one of the oldest auxiliaries of the Communist Party in the United States.'

"Benjamin E. Mays, president, Morehouse College, was a member of the initiating committee for a Congress on Civil Rights which was held in Detroit, April 27 and 28, 1946. (See, Urgent Summons to a Congress on Civil Rights.) He was an honorary national chairman of the Civil Rights Congress, New York, as shown by an undated letterhead concerning a conference held October 11, 1947. He signed a call for a national conference of the Civil Rights Congress to be held in Chicago (Daily Worker, Oct. 21, 1947, p. 5).

"The Civil Rights Congress was cited as subversive and Communist by the Attorney General in letters released December 4, 1947, and September 21, 1948. The group was redesignated pursuant to Executive Order No. 10450. The Committee on Un-American Activities, in its report of September 2, 1947 (pp. 2 and 19), cited the Civil Rights Congress as an organization formed in April 1946 as a merger of two other Communist-front organizations (International Labor Defense and the National Federation for Constitutional Liberties); 'dedicated not to the broader issues of civil liberties, but specifically to the defense of individual Communists and the Communist Party' and 'controlled by individuals who are either members of the Communist Party or openly loyal to it.'

"Dr. Benjamin E. Mays, president, Morehouse College, Atlanta, Ga., signed a statement by the National Council of American-Soviet Friendship in praise of Wallace's open letter to Stalin, May 1948 (pamphlet, How To End the Cold War and Build the Peace, p. 9). A leaflet, 'End the Cold War—Get Together for Peace' (December 1948), named Benjamin E. Mays as one of the signers of the National Council's

appeal to the U.S. Government to end the cold war and arrange a conference with the Soviet Union. He was a member of the Sponsoring Committee of the National Council of American-Soviet Friendship, Committee on Education, as shown by a bulletin of the group, dated June 1945 (p. 22).

"The National Council of American-Soviet Friendship was cited as subversive and Communist by the Attorney General in letters released December 4, 1947, and September 21, 1948. The group was redesignated pursuant to Executive Order No. 10450. The special Committee on Un-American Activities, in its report of March 29, 1944 (p. 156), cited the National Council of American-Soviet Friendship as 'in recent months, the Communist Party's principal front for all things Russian.' . . .

"Dr. Mays signed an open letter sponsored by the National Federation for Constitutional Liberties denouncing U.S. Attorney General Biddle's charges against Harry Bridges (Daily Worker, July 19, 1942, p. 4); booklet, 'Six Hundred Prominent Americans,' p. 25). He also signed a statement sponsored by this organization hailing the War Department's order on commissions for the Communists, as shown by the Daily Worker, March 18, 1945 (p. 2).

"The National Federation for Constitutional Liberties was cited as subversive and Communist by the Attorney General in letters released December 4, 1947, and September 21, 1948. The group was redesignated pursuant to Executive Order No. 10450. The group was cited previously by the Attorney General as 'part of what Lenin called the solar system of organizations, ostensibly having no connection with the Communist Party, by which Communists attempt to create sympathizers and supporters of their program' (CONGRESSIONAL RECORD, September 24, 1942, p. 7687). The special committee, in its report of March 29, 1944 (p. 50), cited the federation as one of the viciously subversive organizations of the Communist Party. The Committee on Un-American Activities, in its report on September 2, 1947 (p. 3), cited the federation as among a maze of organizations which were spawned for the alleged purpose of defending civil liberties in general but actually intended to protect Communist subversion from any penalties under the law.

"Letterheads, dated June 12, 1947, and August 11, 1947, of the Southern Negro Youth Congress, list Dr. Mays as a member of the advisory board. A leaflet of the organization (exhibit 46, public hearings, July 22, 1947, Steele) also contained the name of Dr. Benjamin Mays.

"The Southern Negro Youth Congress was cited as subversive and among the affiliates and committees of the Communist Party, U. S. A., which seeks to alter the form of government of the United States by unconstitutional means by the Attorney General in a letter released December 4, 1947. The group was redesignated pursuant to Executive Order No. 10450. The special committee in its report of January 3, 1940 (p. 9), cited the organization as a Communist front. The Committee on Un-American Activities in its report of April 17, 1947 (p. 14), cited the Southern Negro Youth Congress as surreptitiously controlled by the Young Communist League.

"The Daily Worker, April 27, 1947 (p. 24), reported that Dr. Benjamin E. Mays, Georgia, signed a statement against the ban on the Communist Party. He signed a statement against the North Atlantic Pact, according to the Daily Worker of June 28, 1949 (p. 2). He spoke at a conference on 'Jim Crow in the Nation's Capital' (Daily Worker, December 21, 1950, p. 8)."

"OCTOBER 25, 1955.

"SUBJECT: A. T. WALDEN, national legal committee, NAACP, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"The Daily Worker of October 7, 1952 (p. 3), reported that A. T. Walden, Georgia, was to lead the National Lawyers Guild workshop discussions at a national conference on civil rights, legislation, and discrimination, New York City, October 10, 11, and 12.

"The Special Committee on Un-American Activities, in its report of March 29, 1944 (p. 149), cited the National Lawyers Guild as a Communist-front organization. The Committee on Un-American Activities, in its report on the National Lawyers Guild, September 17, 1950, cited the group as a Communist front which is the foremost legal bulwark of the Communist Party; its front organizations and controlled unions and which since its inception has never failed to rally to the legal defense of the Communist Party and individual members thereof, including known espionage agents.

"A mimeographed letter addressed to the House of Representatives, May 12, 1948, included a list of signers opposing the Mundt anti-Communist bill. Austin T. Walden, Georgia, was one of those signers."

"OCTOBER 25, 1955.

"SUBJECT: ARTHUR D. SHORES, national legal committee, NAACP, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"According to letterheads of the Southern Negro Youth Congress, dated June 12 and August 11, 1947, Arthur D. Shores was a member of the advisory board of this organization. A page from an undated leaflet of the organization also listed Mr. Shores as a member of the advisory board. Arthur Shores, Negro attorney, was associated with Nesbitt Elmore in the defense of Senator Glen H. Taylor, of Idaho, who was fined \$50 and ordered a 180-day suspended jail sentence for defying Birmingham's segregation laws at a meeting of the Southern Negro Youth Congress in Alabama (Daily Worker, May 6, 1948, p. 4).

"The Southern Negro Youth Congress was cited by the Committee on Un-American Activities as 'surreptitiously controlled' by the Young Communist League (report 271, Apr. 17, 1947, p. 14). The special Committee on Un-American Activities, in its report dated January 3, 1940, page 9, cited the Congress as a Communist front. The Attorney General of the United States cited the Southern Negro Youth

Congress as subversive and among the affiliates and committees of the Communist Party, United States of America, which seeks to alter the form of government of the United States by unconstitutional means (letter furnished the Loyalty Review Board, released to the press by the United States Civil Service Commission, Dec. 4, 1947); the Attorney General redesignated the congress pursuant to Executive Order No. 10450 of April 27, 1953, and included it on the April 1, 1954, consolidated list of organizations previously designated.

"Arthur D. Shores, prominent Negro attorney, told the Daily Worker that 'outlawing the Communist Party would 'pave the way for a one-party dictatorship in this country'" (Daily Worker, March 19, 1947, p. 5).

"The Worker for December 14, 1947 (p. 8, southern edition), reported that Arthur Shores, identified as a leading Negro civil rights lawyer, was assisting in the case of Mrs. Ruby Jackson Gainor, outstanding Negro teacher fired by the Jefferson County Board of Education. * * * Mrs. Jackson is the leading petitioner in contempt-of-court proceedings against the board for its refusal to equalize salaries of Negro teachers in accord with a Federal court decree * * *. The article, which identified Mrs. Gainor as president of the Birmingham teachers' local of the United Public Workers, also reported: 'The outcome of Mrs. Gainor's case has become the keystone of the fight of all the Negro teachers in Jefferson County for equal pay. The United Public Workers nationally is supporting the fight * * *'."

It is noted that the United Public Workers of America was formed in 1946 by a merger of the State, County, and Municipal Workers of America and the United Federal Workers of America. Both of these unions were cited by the Special Committee on Un-American Activities in its report of March 29, 1944 (pp. 18 and 19), as among the CIO unions in which the committee found Communist leadership strongly entrenched. The Congress of Industrial Organizations, by vote of the executive board, February 15, 1950, expelled the United Public Workers of America, effective March 1, 1950, on charges of Communist domination (press release, 12th CIO convention, November 20-24, 1950)."

"OCTOBER 13, 1955.

"SUBJECT: LLOYD GARRISON, chairman, national legal committee, NAACP, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"Lloyd K. Garrison was a member of the National Committee of the International Judicial Association according to a letterhead of the organization dated May 18, 1942, and the leaflet, "What is the I. J. A.?" Lloyd K. Garrison, dean, University of Wisconsin Law School, commended the International Juridical Association bulletin in that pamphlet.

"The special Committee on Un-American Activities, in its report dated March 29, 1944 (p. 149); cited the International Juridical Association as a 'Communist front and offshoot of the International Labor

Defense.' The Committee on Un-American Activities, in its report on the National Lawyers Guild, September 17, 1950 (p. 12), cited the International Juridical Association as an organization which 'actively defended Communists and consistently followed the Communist Party line.'

"The Daily Worker for March 18, 1945 (p. 2), and an undated leaflet, 'The only sound policy for a Democracy,' listed Lloyd K. Garrison, National War Labor Board, as one of the signers of a statement sponsored by the National Federation for Constitutional Liberties hailing the War Department order on commissions for the Communists. A photograph of Mr. Garrison is found in the Daily Worker reference.

"The Attorney General of the United States cited the National Federation for Constitutional Liberties as subversive and Communist in letters to the Loyalty Review Board, released December 4, 1947, and September 21, 1948. The Attorney General redesignated the organization April 27, 1953, pursuant to Executive Order No. 10450, and included it on the April 1, 1954, consolidated list of organizations previously designated. The organization was cited previously by the Attorney General as 'part of what Lenin called the solar system of organizations, ostensibly having no connection with the Communist Party, by which Communists attempt to create sympathizers and supporters of their program * * * (CONGRESSIONAL RECORD, September 24, 1942, p. 7687). The special Committee on Un-American Activities, in its report on March 29, 1944 (p. 50), cited the National Federation for Constitutional Liberties as 'one of the viciously subversive organizations of the Communist Party.' The Committee on Un-American Activities, in its report of September 2, 1947 (p. 3), cited the National Federation for Constitutional Liberties as among a 'maze of organizations' which were 'spawned for the alleged purpose of defending civil liberties in general but actually intended to protect Communist subversion from any penalties under the law.'

"Lloyd K. Garrison, Madison, Wis., former Chairman of NLRB, was listed as a member of the Committee on Legal Research and Legal Education of the National Lawyers Guild and his book was reviewed in the newsletter of the National Lawyers Guide, July 1937 (pp. 2-3). Convention News, May 1941 (pp. 3 and 4) published by the National Lawyers Guild for the fifth annual convention, listed Lloyd K. Garrison as a member of the convention nominations committee of the fifth annual convention, Book-Cadillac Hotel, Detroit, Mich., May 29 to June 1, 1941.

"The special Committee on Un-American Activities, in its report of March 29, 1944 (p. 149), cited the National Lawyers Guild as a Communist-front organization. The Committee on Un-American Activities, in its report on the National Lawyers Guild, September 17, 1950, cited the organization as a Communist front which 'is the foremost legal bulwark of the Communist Party, its front organizations, and controlled unions' and which 'since its inception has never failed to rally to the legal defense of the Communist Party and individual members thereof, including known espionage agents.'

"The pamphlet of the Second National Negro Congress, October 1937, listed Lloyd Garrison as one of those who sent greetings to the congress.

"The Communist-front movement in the United States among Negroes is known as the National Negro Congress. * * * The officers of the National Negro Congress are outspoken Communist sympathizers, and a majority of those on the executive board are outright Communists' (Special Committee on Un-American Activities, report, January 3, 1939, p. 81; also cited in reports, January 3, 1940, p. 9; June 25, 1942, p. 20; and March 29, 1944, p. 180). The Attorney General cited the National Negro Congress as subversive and Communist in letters released December 4, 1947, and September 21, 1948; redesignated April 27, 1953, and included on the April 1, 1954, consolidated list. The Attorney General cited the organization previously as a Communist-front organization as shown by the CONGRESSIONAL RECORD of September 24, 1942 (pp. 7687 and 7688).

"The Daily Worker for February 23, 1939 (p. 3) reported that Lloyd Garrison spoke at a conference of the Wisconsin Conference on Social Legislation, Madison, Wis., February 18, 1939. The Attorney General cited the Wisconsin Conference on Social Legislation as subversive and Communist in letters released June 1 and September 21, 1948; redesignated April 27, 1953, and included on the April 1, 1954, consolidated list."

"OCTOBER 25, 1955.

"SUBJECT: ARTHUR J. MANDELL, national legal committee, NAACP, 1954.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"The News Letter of the National Lawyers Guild, July 1937 (p. 2), named Arthur Mandell, Houston, Tex., as a member of the Guild's committee on American citizenship, immigration, and naturalization; and a copy of the 1939 membership list of the National Lawyers Guild, made available to the special Committee on Un-American Activities by the organization, contained the name of Arthur Mandell, Shell Building, Houston, Tex.

"The National Lawyers Guild was cited as a Communist front by the special Committee on Un-American Activities (report, Mar. 29, 1944, p. 149); and it was the subject of a separate report by the Committee on Un-American Activities (H. Rept. No. 3123, Sept. 21, 1950), wherein it was cited as a Communist front which 'is the foremost legal bulwark of the Communist Party, its front organizations, and controlled unions' and which 'since its inception has never failed to rally to the legal defense of the Communist Party and individual members thereof, including known espionage agents.

"Arthur J. Mandell, attorney, Houston, Tex., was shown in the Call to the First Congress of the Mexican and Spanish American Peoples of the United States, March 24-26, 1939, Albuquerque, N. Mex., as one of the signers of that Call. The Congress of the Mexican and Spanish American Peoples * * * was cited as a Communist front by the special

Committee on Un-American Activities (report, Mar. 29, 1944, p. 120).

"A leaflet, attached to an undated letterhead of the National Federation for Constitutional Liberties, named Arthur J. Mandell, attorney, Houston, Tex., as a signer of the organization's January 1943 message to the House of Representatives. The National Federation for Constitutional Liberties has been cited as being subversive and Communist (Attorney General letters released December 4, 1947, and September 21, 1948; also redesignated by the Attorney General pursuant to Executive Order 10450, see consolidated list, April 1, 1954); as 'part of what Lenin called the solar system of organizations, ostensibly having no connection with the Communist Party, by which Communists attempt to create sympathizers and supporters of their program' (Attorney General, CONGRESSIONAL RECORD, Sept. 24, 1942, p. 7687); as 'one of the viciously subversive organizations of the Communist Party' (special Committee on Un-American Activities, report, Mar. 29, 1944, p. 50; also cited in reports, June 25, 1942, and Jan. 2, 1943); and as being among a 'maze of organizations' which were 'spawned for the alleged purpose of defending civil liberties in general but actually intended to protect Communist subversion from any penalties under the law' (Committee on Un-American Activities, report, Sept. 2, 1947, p. 3).

"Arthur Mandell was a member of the resolutions committee at the Congress on Civil Rights in Detroit, Mich., April 27-28, 1946, as shown by a mimeographed release issued by the congress; and Arthur J. Mandell, Houston, was listed as a sponsor of the National Conference of the Civil Rights Congress in Chicago, November 21-23, 1947, in the printed program, Let Freedom Ring. The Civil Rights Congress has been cited as a subversive and Communist organization by the Attorney General (letters released December 4, 1947, and September 21, 1948; also redesignated, see consolidated list, April 1, 1954); and, as an organization formed in April 1946 by merger of two other Communist-front organizations (International Labor Defense and the National Federation for Constitutional Liberties), 'dedicated not to the broader issues of civil liberties, but specifically to the defense of individual Communists and the Communist Party,' and 'controlled by individuals who are either members of the Communist Party or openly loyal to it' (Committee on Un-American Activities, House Report No. 1115, Sept. 2, 1947, pp. 2 and 19)."

"OCTOBER 26, 1955.

"SUBJECT: ROBERT W. KENNY, national legal committee, NAACP, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"Reference to Robert W. Kenny is found in the appendix to this committee's public hearings regarding communism in the United States Government, part 2, September 1950 (pp. 2991-2992), as follows:

"Robert W. Kenny: Kenny, attorney general of State of California during the years 1943-47 and president of the National Lawyers Guild

during the years 1940-48, has been associated with the defense of a number of Communist cases. He was also one of the attorneys for the Hollywood 10. He sent greetings to the Biennial National Conference of the International Labor Defense held April 4-6, 1941; this organization was cited by the former Attorney General Francis Biddle as the 'legal arm of the Communist Party.'

"The American Committee for Protection of Foreign Born has specialized in the legal defense of foreign-born Communists such as Gerhard Eisler. Kenny was a sponsor of its national conference held in Ohio on October 25-26, 1947, and again in 1950. He spoke in behalf of Communists held for deportation, according to the Daily People's World, Communist publication, dated March 8, 1948.

"On repeated occasions, Mr. Kenny has attacked the trial of the 11 Communist leaders convicted for teaching and advocating the overthrow of the Government of the United States by force and violence, particularly as reported by the Daily People's World of July 22, 1948, and the Worker of October 30, 1949.

"He signed a statement in behalf of arrested leaders of the Communist Party of Los Angeles, according to the Daily Worker of October 19, 1949, and the Daily People's World of November 7, 1949. Statements opposing the outlawing or restricting of the Communist Party have been signed by Robert W. Kenny and have appeared frequently in the Communist press. Mr. Kenny has opposed Government loyalty procedures on various occasions.

"On the eve of the 1947 May Day celebration, Pravda, the official newspaper of the Communist Party of the Soviet Union, hailed Robert W. Kenny as a "friend of the Soviet Union in the United States." Another Communist government, namely that of China, selected Mr. Kenny to defend its legal interests, according to the Daily People's World of April 26, 1950 (p. 4).

"Robert W. Kenny has a number of affiliations and associations with Communist-front organizations. These include the American Youth for Democracy (formerly known as the Young Communist League), the National Committee To Win the Peace, of which he was vice chairman, Civil Rights Congress, Joint Anti-Fascist Refugee Committee, American Committee for Yugoslav Relief, Hollywood League for Democratic Activities, California Labor School, Lawyers Committee on American Relations With Spain, Committee for a Democratic Far Eastern Policy, and the American Slav Congress."

"Subsequent to this committee's release which contained the above reference to Robert W. Kenny, he had served as counsel for 66 witnesses before this committee."

"OCTOBER 25, 1955.

"SUBJECT: LOREN MILLER, national vice president and national legal committee, NAACP, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"One Loren Miller, 837 East 24th Street, Los Angeles, Calif., was a signer of Communist Party election petition No. 120 in California in 1932.

"An article entitled 'Why I Will Vote "Red"' written by Loren Miller appeared in the Daily Worker of July 11, 1932 (p. 4). In a note which accompanies this article, the following information is given concerning the author: 'Loren Miller, until recently city editor of the California Eagle, Los Angeles, Calif., largest and oldest of western Negro newspapers, is now en route to the Soviet Union.' Excerpts from this article follow:

"I regret very much that I will not be present to take an active part in the struggle that Negroes must wage to pile up a huge vote for William Z. Foster and James W. Ford, Communist candidates for President and Vice President.

"It must be evident to anybody who thinks through the things about which I have been talking that the Communist Party is our party. It is fighting our fights, warring against our enemies, struggling for our welfare. Commonsense dictates that we should support our party with every means at hand."

Loren Miller wrote an article for the Daily Worker while he was traveling in the Soviet Union with a group of Negro writers, workers, etc., observing conditions. This article concerned the equality of races in the Soviet Union and appeared in the Daily Worker of September 24, 1932 (p. 4). Mr. Miller compared racial equality in the Soviet Union and the United States, stated that the Communist Party in the United States was the only political party which promised equality, and concluded as follows:

"Only the Communists with their straightforward platform on relief for the poor (sic) farmers and workers, their demand for self-determination for Negroes in the Black Belt, and with a Negro, James W. Ford, as nominee for the Vice Presidency deserve the vote of the Negroes of the United States. It is for these reasons that I wish to renew my plea to Negroes everywhere in the United States to vote Communist."

"The Daily Worker of January 26, 1948 (p. 10), reported that Loren Miller, attorney, Los Angeles, defended Claudia Jones, Communist. He signed a statement opposing the Mundt anti-Communist bill as shown by the Daily People's World of May 12, 1948 (p. 3). According to the Daily People's World of July 22, 1948 (p. 3), Loren Miller, attorney, Los Angeles, attacked the arrest of the Communist Party leaders.

"In the Daily Worker of December 24, 1931 (p. 3), Loren Miller was named as a reporter for the Worker. Reference to Loren Miller as a reporter for the Worker appeared in the Daily Worker of December 21, 1935 (p. 3). Loren Miller has been a contributor to the Daily Worker as shown in the issue of May 4, 1938 (p. 7), as well as the two issues already cited.

"The Worker is the Sunday edition of the Daily Worker, which was cited as 'official Communist Party, U.S.A., organ' by the Committee on Un-American Activities in report 1920, dated May 11, 1948. The publication was cited as 'chief journalistic mouthpiece of the Communist Party' by the special Committee on Un-American Activities in report 1311 of March 29, 1944; it had previously been cited as a Com-

munist publication in reports of the special Committee on Un-American Activities, dated January 3, 1939, January 3, 1940, January 3, 1941, and June 25, 1942.

"Loren Miller was named as editor of *New Masses* in the issue of August 20, 1935 (p. 5), and as associate editor in the issue of January 14, 1936 (p. 5). He was shown as contributing editor in the following issues of *New Masses*: June 2, 1936 (p. 5), January 5, 1937 (p. 22), May 11, 1937 (p. 9), September 7, 1937 (p. 9), January 11, 1938 (p. 9), and September 20, 1938 (p. 14). He was a contributor to *New Masses*, as shown in the issue of August 20, 1935 (p. 26), and was named as a contributor to *New Masses* in the *Daily Worker* of April 3, 1963 (p. 3).

"*New Masses* was cited as a 'Communist periodical' by the Attorney General of the United States (CONGRESSIONAL RECORD, September 24, 1942, p. 7688). It was cited as a 'national circulated weekly journal of the Communist Party' by the special Committee on Un-American Activities in report 1311 of March 29, 1944. *New Masses* had been cited previously as a Communist publication in reports of the special Committee on Un-American Activities, dated January 3, 1939, and June 25, 1942.

"As shown by an undated letterhead of Book Union, Inc., Loren Miller was a member of its advisory council. The special Committee on Un-American Activities, in report 1311 of March 29, 1944, cited Book Union as 'distributors of Communist literature.'

"According to a letterhead of August 24, 1939, Loren Miller was a member of the Harry Bridges defense committee, southern division.

"In report 1311 of the special Committee on Un-American Activities, dated March 29, 1944, the Harry Bridges defense committee was cited as one of the Communist fronts formed to oppose deportation of Harry Bridges, Communist Party member and leader of the San Francisco general strike of 1934 which was planned by the Communist Party.

"As shown in the Call for the National Negro Congress held in Chicago, Ill., February 14, 1936, Loren Miller, Los Angeles, Calif., was one of the endorsers of the National Negro Congress.

"From the record of its activities and the composition of its (National Negro Congress) governing bodies, there can be little doubt that it has served as what James W. Ford, Communist vice presidential candidate elected to the executive committee in 1937, predicted: "An important sector of the democratic front," sponsored and supported by the Communist Party' (Attorney General, CONGRESSIONAL RECORD, September 24, 1942, pp. 7687-7688). The National Negro Congress was cited as a Communist front in reports of the special Committee on Un-American Activities, dated January 3, 1939, January 3, 1940, June 25, 1942, and March 29, 1944. The Attorney General cited the group as subversive and Communist in letters released December 4, 1947, and September 21, 1948; redesignated April 27, 1953, and included on the April 1, 1954, consolidated list.

"Loren Miller, author, was a signer of the open letter to American liberals, as shown in *Soviet Russia Today*, issue of March 1937 (pp. 14-15).

"In March 1937 a group of well-known Communists and Communist collaborators published an open letter bearing the title given above. The letter was a defense of the Moscow purge trials' (report of the special Committee on Un-American Activities, June 25, 1942).

"As shown in the proceedings of the Second United States Congress Against War and Fascism, held in Chicago, Ill., September 28, 29, 30, 1934, under auspices of the American League Against War and Fascism, the report of the publications committee was presented by Loren Miller. (See public hearings, appendix, vol. 10, p. 22.)

"The American League Against War and Fascism was formally organized at the First United States Congress Against War and Fascism held in New York City, September 29 to October 1, 1933.

"* * * The program of the first congress called for the end of the Roosevelt policies of imperialism and for the support of the peace policies of the Soviet Union, for opposition to all attempts to weaken the Soviet Union. * * * Subsequent congresses in 1934 and 1936 reflected the same program' (Attorney General, CONGRESSIONAL RECORD, September 24, 1942, p. 7683).

"The American League Against War and Fascism was 'established in the United States in an effort to create public sentiment on behalf of a foreign policy adapted to the interests of the Soviet Union' (Attorney General, CONGRESSIONAL RECORD, September 24, 1942, p. 7683). The Attorney General cited the American League Against War and Fascism as subversive and Communist in letters to the Loyalty Review Board, released December 4, 1947, and September 21, 1948; redesignated April 27, 1953, and included on the April 1, 1954, consolidated list of organizations previously designated. The organization was cited by the special Committee on Un-American Activities as a Communist front in reports of the special Committee on Un-American Activities, dated January 3, 1939, January 3, 1940, June 25, 1942, and March 29, 1944.

"In connection with the testimony of Harper L. Knowles and Ray E. Nimmo before the special Committee on Un-American Activities on October 25, 1938, a brief relating to activities of the Communist Party among professional groups was presented and incorporated in the record. In this brief Loren Miller is described as 'contributing editor to New Masses and a member of the Communist Party' (public hearings, p. 1997). According to this same source, he was a participant in the Western Writers Congress, cited as a Communist front by the special Committee on Un-American Activities in report 1311 of March 29, 1944.

"A pamphlet, 'Equality, Land and Freedom' published by the League of Struggle for Negro Rights, December 1934 (p. 44), listed Loren Miller as a member of the national council of that organization.

"The special Committee on Un-American Activities, in its report of January 3, 1939 (p. 81), cited the League of Struggle for Negro Rights as follows: 'The Communist-front movement in the United States among Negroes is known as the National Negro Congress. Practically the same group of leaders directing this directed the League of Struggle for Negro Rights, which was, until 2 years ago, the name

of the Communist front for Negroes. The name was later changed
 • • • in 1936 to the National Negro Congress."

"It was reported in the Daily People's World of September 28, 1950 (p. 5) that Loren Miller was one of a group of Los Angeles lawyers who signed a brief against a Communist registration ordinance. The brief was presented in connection with the case of Henry Steinberg, county legislative director of the Communist Party, who was charged with failing to register with the sheriff's office in accordance with provisions of the ordinance. Reference to Loren Miller as one of the attorneys who signed a brief charging Los Angeles County's Communist registration ordinance with being 'basically unconstitutional' also appeared in the Daily People's World of October 9, 1950 (p. 3). The brief was filed in connection with a hearing on a demurrer against the ordinance filed by attorneys for Gus Brown, Furniture Workers Local 576 business agent.

"The Daily People's World of May 17, 1950 (p. 3), listed Loren Miller as one who signed a statement against the loyalty oath."

"FEBRUARY 13, 1950.

"SUBJECT: Z. ALEXANDER LOOBY, national board of directors, national legal committee, NAACP, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"A 1939 membership list of the National Lawyers Guild, on file with this committee, contains the name of Alexander Looby, 419 Fourth Avenue, Nashville, Tenn.

"The special Committee on Un-American Activities, in its report of March 23, 1944 (p. 149), cited the National Lawyers Guild as a Communist-front organization. The Committee on Un-American Activities, in its report on the National Lawyers Guild, September 17, 1950, cited the organization as a Communist front which 'is the foremost legal bulwark of the Communist Party, its front organizations, and controlled unions,' and which 'since its inception has never failed to rally to the legal defense of the Communist Party and individual members thereof, including known espionage agents.'

"The Daily People's World of April 25, 1948 (p. 11), reported that Alexander Looby, attorney, Nashville, Tenn., had spoken before the Southern Negro Youth Congress. The Worker of May 18, 1948 (p. 2), disclosed that Z. Alexander Looby, attorney, Nashville, Tenn., had spoken before the same organization.

"The Attorney General of the United States cited the Southern Negro Youth Congress as subversive and among the affiliates and committees of the Communist Party, U.S.A., which seeks to alter the form of government of the United States by unconstitutional means (letter to Loyalty Review Board, released December 4, 1947). The Attorney General redesignated the group April 27, 1953, pursuant to Executive Order No. 10450, and included it on the April 1, 1954, consolidated list of organizations previously designated. The special Committee on Un-American Activities, in its report of January 3, 1940 (p. 9), cited

the Southern Negro Youth Congress as a Communist-front organization. The Committee on Un-American Activities, in its report of April 17, 1947 (p. 14), cited the organization as 'surreptitiously controlled' by the Young Communist League."

"OCTOBER 25, 1955.

"SUBJECT: KARL N. LLEWELLYN, national legal committee, NAACP, 1954.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"Prof. K. N. Llewellyn, Columbia Law School, spoke at a conference of the Greater New York Emergency Conference on Inalienable Rights as shown by the program, February 12, 1940.

"The Special Committee on Un-American Activities, in its report of March 29, 1944 (pp. 96 and 129), cited the Greater New York Emergency Conference on Inalienable Rights as a Communist front which was succeeded by the National Federation for Constitutional Liberties. The Committee on Un-American Activities, in its report of September 2, 1947 (p. 3), cited the Greater New York Emergency Conference on Inalienable Rights as among a 'maze of organizations' which were 'spawned for the alleged purpose of defending civil liberties in general but actually intended to protect Communist subversion from any penalties under the law.'

"A letterhead of the Non-Partisan Committee for the Re-election of Vito Marcantonio dated October 33, 1936 listed Karl N. Llewellyn as vice chairman of the organization.

"The Special Committee on Un-American Activities, in its report of March 29, 1944 (p. 122), cited the Non-Partisan Committee for the reelection of Vito Marcantonio as a Communist-front organization.

"An undated letterhead of the International Juridical Association listed Prof. Karl Llewellyn, New York, as a member of the national committee.

"The Special Committee on Un-American Activities, in its report of March 29, 1944 (p. 149), cited the International Juridical Association as 'a Communist front and an offshoot of the International Labor Defense.' The Committee on Un-American Activities, in its report on the National Lawyers Guild, September 17, 1950 (p. 12), cited the International Juridical Association, as an organization which 'actively defended Communists and consistently followed the Communist Party line.'"

"OCTOBER 25, 1955.

"SUBJECT: SHAD POLIER (ISADOR POLIER), national legal committee, NAACP, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"Who's Who in America (vol. 25, 1948-49, p. 1971) shows that

Justine Wise Polier married Shad Polier in 1937. *Who's Who in American Jewry* (vol. 3, 1938-39, p. 818) shows that Justine Wise Polier is the daughter of Rabbi Stephen S. Wise and that she married Isadore Polier, March 26, 1937, New York City. It is noted further that Max Lowenthal, a witness during public hearings before this committee, September 15, 1950, when asked if he were acquainted with Shad Polier, stated: 'Yes, he was Rabbi Wise's son-in-law.' (*Communism in the U.S. Government*, pt. 2, p. 2984.) Therefore, this report includes references from the public records, files and publications of this committee which appear under the name, Shad Polier, and references which appear under the name, Isadore Polier.

"Shad Polier was named in the election campaign letter of the Washington, D.C. chapter of the National Lawyers Guild, dated May 18, 1940, as a candidate for delegate to the national convention of the Guild. *Convention News* for May 1941 (p. 3) listed Shad Polier, New York City, as a member of the nominations committee of the National Lawyers Guild Fifth Annual Convention at the Book-Cadillac Hotel, Detroit, Mich., May 29-June 1, 1941. Shad Polier is shown as the writer of an article in the *Lawyers Guild Review*, vol. VI, pp. 490-491.

"The National Lawyers Guild was cited as a Communist-front organization by the Special Committee on Un-American Activities (Rept. 1311, Mar. 29, 1944, p. 149), and was the subject of a separate report by the Committee on Un-American Activities, September 17, 1950, in which it was cited as a Communist front that 'is the foremost legal bulwark of the Communist Party, its front organizations, and controlled unions' and which 'since its inception has never failed to rally to the legal defense of the Communist Party and individual members thereof, including known espionage agents.'

"A letterhead of the International Juridical Association, dated May 18, 1942, carries the name of Shad Polier, New York, as a member of the organization's national committee. The Special Committee on Un-American Activities cited the International Juridical Association as 'a Communist front and an offshoot of the International Labor Defense' (report of Mar. 29, 1944, p. 149); the Committee on Un-American Activities cited the International Juridical Association as an organization which 'actively defended Communists and consistently followed the Communist Party line' (Rept. 3123, Sept. 21, 1950, p. 12).

"A 1941 membership list of the Washington Book Shop, on file with this committee, contains the name of Shad Polier, 3610 Idaho Avenue NW., Washington, D.C. 'The Washington Cooperative Book Shop, under the name "The Book Shop Association," was incorporated in the District of Columbia in 1938. * * * It maintains a bookshop and art gallery at 916 Seventeenth Street NW., Washington, D.C., where literature is sold and meetings and lectures held. Evidence of Communist penetration or control is reflected in the following: Among its stock the establishment has offered prominently for sale books and literature identified with the Communist Party and certain of its affiliates and front organizations.' (United States Attorney General, CONGRESSIONAL RECORD, September 24, 1942, p. 7688). The Attorney

General also included the Book Shop on lists of subversive and Communist organizations furnished the Loyalty Review Board, press releases of December 4, 1947, and September 21, 1948) and redesignated it pursuant to Executive Order 10450 (memorandum of April 29, 1953, released by the Department of Justice); and included on the April 1, 1954, consolidated list of organizations previously designated. The Special Committee on Un-American Activities also cited the Washington Book Shop as a Communist front (report of March 29, 1944, p. 150).

"The newsletter of the National Lawyers Guild for July 1937 (p. 2) named Isadore Polier, New York City, as chairman of the guild's committee on constitutional and judicial review. A leaflet, What Is the IJA?, contains the name of Isadore Polier as a member of the National Committee of the International Juridical Association. An undated letterhead of the group listed him as executive director, and this committee's report on the National Lawyers Guild, September 17, 1950 (p. 13), reported that Isadore Polier was executive director of the International Juridical Association at 'the time of its inception.' See citation on page 1.

The Daily Worker of April 8, 1938 (p. 4), reported that Isadore Polier signed a petition, sponsored by the American Friends of Spanish Democracy, to lift the arms embargo. 'In 1937-38, the Communist Party threw itself wholeheartedly into the campaign for the support of the Spanish Loyalist cause, recruiting men and organizing multifarious so-called relief organizations * * * such as * * * American Friends of Spanish Democracy' (report of the special committee dated March 29, 1944, p. 82).

"The booklet, These Americans Say (p. 8), compiled and published by the Coordinating Committee To Lift the Embargo, named Isadore Polier among the representative individuals who advocated lifting the Spanish embargo. The Coordinating Committee To Lift the (Spanish) Embargo was cited by the Special Committee as one of a number of front organizations, set up during the Spanish Civil War by the Communist Party in the United States and through which the party carried on a great deal of agitation (report of March 29, 1944, pp. 137 and 138)."

"OCTOBER 25, 1955.

"SUBJECT: JAWN SANDIFER, national legal committee, NAACP, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"The Daily Worker of April 10, 1951 (p. 5), reported that Jawn A. Sandifer was a speaker for the National Lawyers Guild. The October 7, 1952, issue of the Daily Worker (p. 3), reported that Jawn L. Sandifer, New York, was to lead workshop discussions at the national conference of the National Lawyers Guild on civil rights, legislation, and discrimination to be held at the Park Sheraton Hotel, New York City on October 10, 11, and 12, 1952.

"The Special Committee on Un-American Activities, in its report of March 29, 1944 (p. 149), cited the National Lawyers Guild as a Communist-front organization. The Committee on Un-American Activities, in its report on the National Lawyers Guild, September 17, 1950, cited the organization as a Communist front, which 'is the foremost legal bulwark of the Communist Party, its front organizations, and controlled unions' and which 'since its inception has never failed to rally to the legal defense of the Communist Party and individual members thereof, including known espionage agents.'"

"OCTOBER 25, 1955.

"SUBJECT: SIDNEY R. REDMOND, national legal committee, NAACP, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"S. R. Redmond signed the open letter of the National Federation for Constitutional Liberties denouncing the Attorney General's attack on the Communist Party and decision in the Harry Bridges case as shown by the Daily Worker of July 19, 1942 (p. 4), and the booklet, '600 Prominent Americans' (p. 27). Sidney R. Redmond, editor, National Bar Journal, St. Louis, Mo., signed a statement of the National Federation for Constitutional Liberties supporting the War Department's order on granting commissions 'to members of the Armed Forces who have been members of or sympathetic to the views of the Communist Party' according to an undated leaflet, 'the only sound policy for a democracy' and the Daily Worker, March 19, 1945 (p. 4).

"The Attorney General of the United States cited the National Federation for Constitutional Liberties as subversive and Communist in letters to the Loyalty Review Board, released December 4, 1947, and September 21, 1948; redesignated April 27, 1953, pursuant to Executive Order No. 10450, and included on the April 1, 1954, consolidated list of organizations previously designated. The Attorney General cited the organization previously as 'part of what Lenin called the solar system of organizations, ostensibly having no connection with the Communist Party, by which Communists attempt to create sympathizers and supporters of their program' (CONGRESSIONAL RECORD, Sept. 24, 1942, p. 7687). The special Committee on Un-American Activities, in its report of March 29, 1944 (p. 50), cited the National Federation for Constitutional Liberties as 'one of the viciously subversive organizations of the Communist Party.' The Committee on Un-American Activities, in its report of September 2, 1947 (p. 3), cited the National Federation * * * among a 'maze of organizations' which were 'spawned for the alleged purpose of defending civil liberties in general but actually intended to protect Communist subversion from any penalties under the law.'"

"OCTOBER 25, 1955.

"SUBJECT: GEORGE M. JOHNSON, national legal committee, NAACP, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"George M. Johnson, Washington, D.C., was a member of the executive board of the National Lawyers Guild as of 1949. (See the committee's report on the National Lawyers Guild, p. 18.)

"The Special Committee on Un-American Activities, in its report of March 29, 1944 (p. 149), cited the National Lawyers' Guild as a Communist-front organization. The Committee on Un-American Activities, in its report on the National Lawyers' Guild, September 17, 1950, cited the organization as a Communist-front which 'is the foremost legal bulwark of the Communist Party, its front organizations, and controlled unions' and which 'since its inception has never failed to rally to the legal defense of the Communist Party and individual members thereof, including known espionage agents.'"

"OCTOBER 25, 1955.

"SUBJECT: EDWARD P. LOVETT, National legal committee, NAACP, 1954.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"A 1939 membership list of the National Lawyers Guild listed Edward P. Lovett, 615 F Street NW., Washington, D.C., as a member of that organization.

"The Special Committee on Un-American Activities, in its report of March 29, 1944 (p. 149), cited the National Lawyers' Guild as a Communist-front organization. The Committee on Un-American Activities, in its report on the National Lawyers' Guild, September 17, 1950, cited the organization as a Communist front which 'is the foremost legal bulwark of the Communist Party, its front organizations, and controlled unions' and which 'since its inception has never failed to rally to the legal defense of the Communist Party and individual members thereof, including known espionage agents.'"

"OCTOBER 25, 1955.

"SUBJECT: LOUIS L. REDDING, national legal committee, NAACP, 1954, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"A 1939 membership list of the National Lawyers' Guild listed Louis Redding, 1002 Franch St., Wilmington, Del., as a member of the organization. Louis L. Redding, a member of the Delaware bar, was among the speakers at a panel session on Civil Rights and Liberties as part of the National Lawyers' Guild annual convention, February 20-23, 1953, New York, City, according to the Daily Worker, February 20, 1953 (p. 6).

"The Special Committee on Un-American Activities, in its report of March 29, 1944 (p. 149), cited the National Lawyers' Guild as a Communist front organization. The Committee on Un-American Activities, in its report on the National Lawyers' Guild, September 17,

1950, cited the organization as a Communist front which 'is the foremost legal bulwark of the Communist Party, its front organizations, and controlled unions' and which 'since its inception has never failed to rally to the legal defense of the Communist Party and individual members thereof, including known espionage agents.'

"The official proceedings of the National Negro Congress, 1938 (pp. 5, 6, 41), listed Louis L. Redding, Delaware, as a member of the National Executive Council and a member of the presiding committee and general resolutions committee.

"The Attorney General cited the National Negro Congress as subversive and Communist in letters released December 4, 1947 and September 21, 1948; redesignated April 27, 1953 and included on the April 1, 1954 consolidated list. The organization was cited previously by the Attorney General as a Communist front (CONGRESSIONAL RECORD, September 24, 1942, pp. 7687 and 7688). The Special Committee on Un-American Activities, in its report of January 3, 1939 (p. 81), cited the National Negro Congress as 'the Communist-front movement in the United States among Negroes.'"

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"OCTOBER 25, 1955.

"SUBJECT: JOSEPH B. ROBINSON, national health committee, NAACP, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"One Joseph B. Robinson signed the call for the National Emergency Conference, Washington, D.C., May 13 and 14, 1939.

"The special Committee on Un-American Activities, in its report of March 29, 1944 (p. 49), cited the National Emergency Conference as a Communist-front organization. The Committee on Un-American Activities, in its report of September 2, 1947 (p. 12), cited the National Emergency Conference as follows: 'It will be remembered that during the days of the infamous Soviet-Nazi pact, the Communists built protective organizations known as the National Emergency Conference, the National Emergency Conference for Democratic Rights, which culminated in the National Federation for Constitutional Liberties.'"

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"OCTOBER 25, 1955.

"SUBJECT: DR. EDWARD L. YOUNG, national health committee, NAACP, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"Dr. Edward L. Young was an initial sponsor of the American Peace Crusade as shown by letterheads dated February 1951 and February 1953. He signed a petition of the American Peace Crusade calling on President Truman and Congress to seek a big-power act as reported by the Daily Worker of February 1, 1952 (p. 1), which source he was identified with the Harvard University Medical School. The Daily

Worker of February 1, 1951 (p. 2), listed Dr. Edward L. Young, Committee on Physicians for Improvement of Medical Care, Brookline, Mass., as a sponsor of the American Peace Crusade.

"The Committee on Un-American Activities, in its statement issued on the March of Treason, February 19, 1951, and report on the Communist peace offensive, April 1, 1951 (p. 51), cited the American Peace Crusade as an organization which 'the Communists established' as 'a new instrument for their peace offensive in the United States' and which was heralded by the Daily Worker 'with the usual bold headlines reserved for projects in line with the Communist objectives.' The Attorney General of the United States designated the American Peace Crusade January 22, 1954 pursuant to Executive Order No. 10450, and included it on the April 1, 1954, consolidated list of organizations previously designated.

"Dr. Young was a United States sponsor of the American Continental Congress for Peace as shown by an official leaflet published by the Congress.

"The Committee on Un-American Activities, in its report on the Communist peace offensive, April 1, 1951 (p. 21), cited the American Continental Congress for Peace as 'another phase' in the Communist 'peace' campaign, aimed at consolidating anti-American forces throughout the Western Hemisphere."

"According to a statement attached to a press release of the Committee for Peaceful Alternatives to the Atlantic Pact, dated December 14, 1949 (p. 10), Dr. Edward L. Young, Committee of physicians for Improvement of Medical Care, Brookline, Mass., signed a statement calling for international agreement to ban use of atomic weapons.

"The Committee for Peaceful Alternatives to the Atlantic Pact was cited by the Committee on Un-American Activities as an organization which was formed as a result of the Conference for Peaceful Alternatives to the Atlantic Pact and which was located, according to a letterhead of September 16, 1950, at 30 North Dearborn Street, Chicago, Ill.; and to further the cause of 'Communists in the United States' doing 'their part in the Moscow campaign.'

"A mimeographed petition, attached to a letterhead of the Spanish Refugee Appeal of the Joint Anti-Fascist Refugee Committee dated May 18, 1951, listed Dr. Edward L. Young, Brookline, Mass., as one who signed a petition to President Truman 'to bar military aid to or alliance with Fascist Spain.'

"The Attorney General cited the Joint Anti-Fascist Refugee Committee as subversive and Communist in letters to the Loyalty Review Board, released December 4, 1947, and September 21, 1948; redesignated April 27, 1953, and included on the April 1, 1954, consolidated list. The special Committee on Un-American Activities, in its report of March 29, 1944 (p. 174), cited the Joint Anti-Fascist Refugee Committee as a Communist-front organization.

"Dr. Edward L. Young was shown as a member of the board of directors of the National Council of the Arts, Sciences, and Professions on a leaflet, Policy and Program Adopted by the National Convention, 1950, a letterhead dated July 28, 1950, and a letterhead dated

December 7, 1952 (photostat). He was a sponsor of the Cultural and Scientific Conference for World Peace, New York City, March 25-27, 1949, as shown by the conference program (p. 13), the conference call, and the Daily Worker, February 21, 1949 (p. 9). As shown by the conference program (p. 10), he spoke at the conference, and according to Speaking of Peace, edited report of the conference (p. 49), Dr. Young introduced the discussion on psychiatric aspects of today's international crisis. He signed a statement supporting a rehearing of the case of the Communist leaders before the Supreme Court and protesting the Smith Act as shown by We Join Black's Dissent, a reprint of an article from the St. Louis Post-Dispatch, June 20, 1951, by the National Council of the Arts, Sciences, and Professions. The Daily Worker of February 28, 1949 (p. 2) reported that Dr. Young was a speaker for the National Council of the Arts, Sciences, and Professions. He signed a statement of the organization as shown by the CONGRESSIONAL RECORD, July 14, 1949 (p. 9620). He signed a resolution against atomic weapons released by the National Council as shown by a mimeographed list of signers attached to a letterhead of July 28, 1950. He signed a peace appeal in a drive of the National and New York Councils of the Arts, * * *, as reported in the Daily Worker of May 16, 1952 (p. 2).

"The Committee on Un-American Activities, in its report of April 19, 1949 (p. 2), cited the National Council of the Arts, Sciences, and Professions as a Communist-front organization. In this report, Review of the Scientific and Cultural Conference for World Peace, the committee cited the conference as a Communist front which 'was actually a supermobilization of the inveterate wheelhorses and supporters of the Communist Party and its auxiliary organizations.'

"As shown by an undated leaflet, 'Prominent Americans Call for * * *' (received by this committee September 11, 1950), and the Daily Worker of August 10, 1950 (p. 1), Dr. Edward L. Young signed the World Peace Appeal.

"The Committee on Un-American Activities, in its report on the Communist peace offensive, April 1, 1954 (p. 34), cited the World Peace Appeal as a petition campaign launched by the permanent committee of the World Peace Congress at its meeting in Stockholm, March 18-19, 1950; as having 'received the enthusiastic approval of every section of the international Communist hierarchy'; as having been lauded in the Communist press, putting 'every individual Communist on notice that he "has the duty to rise to this appeal"; and as having received the official endorsement of 'the Supreme Soviet of the U.S.S.R., which has been echoed by the governing bodies of every Communist satellite country, and by all Communist Parties throughout the world.'

"The following is quoted from a 'Statement of Principles for the Defense of Democracy Against McCarthysim,' as reported by the Daily Worker of March 31, 1954 (p. 8):

"Minority opinion is being suppressed by such devices as blacklisting, dismissal from employment, and even jailing.

"Teachers, lawyers, doctors, writers, artists, actors, and other professionals should be free to practice their professions without discrimination because of their political beliefs or associations, whether they be Republican, Democrat, Socialist, or Communist."

"The Daily Worker article reported that 'the signers of the statement urge support for an eight-point program, including abolition of the Attorney General's list of subversive organizations, reinstatement of teachers dismissed in recent inquiries, and amnesty for those in jail on charges of "conspiracy to teach and advocate" their political views.' Dr. Edward L. Young, Brookline, Mass., was named as a signer."

"The call to a bill of rights conference New York City, July 16 and 17, 1949, named Dr. Edward L. Young, Massachusetts General Hospital, as a sponsor. Elizabeth Gurley Flynn, a member of the national committee of the Communist Party, in writing about the conference for her column in the Daily Worker (July 25, 1949, p. 8), stated that one of the highlights of the conference was the fight for the 12 defendants in the current Communist cases. She reported that seven of the defendants were present and participated actively. The New York Times (July 18, 1949, p. 13) reported that 'the 20 resolutions adopted unanimously by the 2-day conference registered opposition to the conspiracy trial of the 11 Communist leaders, the Presidential loyalty order * * * deportation for political belief * * * among others. The conference also called for an end to the investigation by the Federal Bureau of Investigation into political, rather than criminal, activities.'"

"OCTOBER 25, 1955.

"SUBJECT: VIOLA BERNARD, national health committee, NAACP, 1954.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"The Daily Worker of April 8, 1938 (p. 4), listed Viola Bernard as one who signed a petition of the American Friends of Spanish Democracy to lift the arms embargo.

"The special Committee on Un-American Activities, in its report of March 29, 1944 (p. 82), cited the American Friends of Spanish Democracy as follows: 'In 1937-38, the Communist Party threw itself wholeheartedly into the campaign for the support of the Spanish loyalist cause, recruiting men and organizing multifarious so-called relief organizations * * * such as * * * American Friends of Spanish Democracy.'"

"OCTOBER 25, 1955.

"SUBJECT: DR. RUSSELL L. CECIL, national health committee, NAACP, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"A pamphlet, 'Relighting the Lamps of China,' listed Russell L. Cecil as a medical sponsor of the China Aid Council.

"The special Committee on Un-American Activities, in its report of June 25, 1942 (p. 16), cited the China Aid Council as a 'subsidiary' of the American League for Peace and Democracy, cited as subversive and Communist by the Attorney General of the United States in letters to the Loyalty Review Board, released June 1 and September 21, 1948; redesignated April 27, 1953, pursuant to Executive Order No. 10450, and included on the April 1, 1954, consolidated list of organizations previously designated. The organization was cited previously by the Attorney General as established in the United States in 1937 as successor to the American League Against War and Fascism 'in an effort to create public sentiment on behalf of a foreign policy adapted to the interests of the Soviet Union * * * (CONGRESSIONAL RECORD, September 24, 1942, pp. 7683 and 7684). The special Committee on Un-American Activities, in its report of January 3, 1939 (pp. 69-71), cited the American League for Peace and Democracy as 'the largest of the Communist front' movements in the United States * * *."

"OCTOBER 25, 1955.

"SUBJECT: DR. C. HERBERT MARSHALL, national health committee, NAACP, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"A membership list of the American League for Peace and Democracy which was compiled by the special Committee on Un-American Activities from original records of the organization, subpoenaed in 1939 by the committee, contains the name of one C. Herbert Marshall, of 2712 P Street NW., Washington, D.C.

"The Attorney General of the United States cited the American League for Peace and Democracy as subversive and Communist in letters to the Loyalty Review Board, released June 1 and September 21, 1948. The Attorney General redesignated the organization April 27, 1953, pursuant to Executive Order No. 10450, and included it on the April 1, 1954, consolidated list of organizations previously designated. The organization was cited previously by the Attorney General as established in the United States in 1937 as successor to the American League Against War and Fascism 'in an effort to create public sentiment on behalf of a foreign policy adapted to the interests of the Soviet Union' (CONGRESSIONAL RECORD, Sept. 24, 1942, pp. 7683 and 7684). The special Committee on Un-American Activities, in its report of January 3, 1939 (pp. 69-71), cited the American League for Peace and Democracy as 'the largest of the Communist front movements in the United States. * * *'

"C. Herbert Marshall was shown as a sponsor of the Washington Citizens Committee to Free Earl Browder in an advertisement of the organization which appeared in the Washington Post of May 1942 (p. 9). When Earl Browder (then general secretary, Communist

Party) was in Atlanta Penitentiary serving a sentence involving his fraudulent passports, the Communist Party's front which agitated for his release was known as the Citizens' Committee to Free Earl Browder * * * Elizabeth Gurley Flynn, one of the few outstanding women leaders of the Communist Party in this country, headed it' (special Committee on Un-American Activities, report, March 29, 1944, pp. 6 and 55). The Citizens' Committee to Free Earl Browder was cited as Communist by the Attorney General in a letter released April 27, 1949; redesignated April 27, 1953, and included on the April 1, 1954, consolidated list.

"The call to a conference on civil rights, April 20-21, 1940 (p. 4), lists C. Herbert Marshall, M.D., as a sponsor of the Washington Committee for Democratic Action, under whose auspices the conference was held. A letterhead of the organization, dated April 26, 1940, also shows C. Herbert Marshall as a sponsor. In 1941, Dr. C. Herbert Marshall was a member of the executive committee of the Washington Committee for Democratic Action, according to a letterhead dated May 23, 1941.

"The Attorney General cited the Washington Committee for Democratic Action as subversive and Communist in letters released December 4, 1947, and September 21, 1948; redesignated April 27, 1953, and included on the April 1, 1954, consolidated list. The organization was cited previously by the Attorney General as an 'affiliate' or 'local chapter' of the National Federation for Constitutional Liberties. "The program of the Washington committee followed that of the national federation. National Communist leaders have addressed its meetings, and conferences sponsored by it have been attended by representatives of prominent Communist front organizations' (CONGRESSIONAL RECORD, Sept. 24, 1942, pp. 7688 and 7689). The special Committee on Un-American Activities, in its report of June 25, 1942 (p. 22), cited the Washington Committee for Democratic Action as follows: 'When the American League for Peace and Democracy was dissolved in February 1940 its successor in Washington was called the Washington Committee for Democratic Action.'

"As shown by an advertisement in the Washington Post, May 18, 1948 (p. 15), Dr. C. Herbert Marshall signed a statement against the Mundt anti-Communist bill."

"FEBRUARY 13, 1956.

"SUBJECT: GLOSTER CURRENT, director of branch department, NAACP, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"Gloster Current and his orchestra were scheduled to play at the Independence Day picnic to be held July 3-4, 1938, under the auspices of the Communist Party of Michigan, according to a leaflet entitled 'Where's Everybody Going?' which announced the picnic.

"The Civil Rights Federation (affiliated with the National Federa-

tion for Constitutional Liberties) issued a call to a statewide conference, September 12, 1943, in Detroit, Mich.; the name of Gloster Current appeared on the call in a list of sponsors and he was identified as secretary, National Association for the Advancement of Colored People, Detroit chapter.

"The Attorney General of the United States cited the Michigan Civil Rights Federation as an affiliate of the Communist front, the National Federation for Constitutional Liberties; and as a subversive and Communist organization which has been succeeded by and now operates as the Michigan chapter of the Civil Rights Congress. (CONGRESSIONAL RECORD, Sept. 24, 1942, p. 7687; and press releases of Dec. 4, 1947, June 1 and Sept. 21, 1948; also included on his consolidated list of organizations.) The Special Committee on Un-American Activities and the Committee on Un-American Activities cited the Michigan Civil Rights Federation as a Communist-front organization. (From Report No. 1311 of the Special Committee on Un-American Activities, dated Mar. 29, 1944; and Report No. 1115 of the Committee on Un-American Activities dated Sept. 2, 1947.)

"In July 1947 Mr. Walter S. Steele testified in public hearings before this committee, at which time he named Gloster Current of the National Association for the Advancement of Colored People as a council member from the United States to the World Federation of Democratic Youth (from Steele testimony, p. 81).

"The World Federation of Democratic Youth was founded in London in November 1945 by delegates from over 50 nations. From the outset, the World Federation of Democratic Youth demonstrated that it was far more interested in serving as a pressure group in behalf of Soviet foreign policy than it was in the specific problems of international youth. (From Report No. 271 of the Committee on Un-American Activities dated Apr. 17, 1947.)"

"FEBRUARY 13, 1956.

"SUBJECT: RUBY HURLEY, southeast regional secretary, Birmingham, Ala., NAACP, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"Ruby Hurley was a sponsor of the World Youth Festival, Prague, July-August 1947, as shown by the World Youth Festival, page 7, and the booklet, "The Bright Face of Peace," published by the U.S. Committee for the World Youth Festival. As shown by the call to World Youth Festival (p. 3), the festival, held in Prague from July 20 to August 17, 1947, was sponsored by the World Federation of Democratic Youth and the International Union of Students.

"The Committee on Un-American Activities, in its report of April 17, 1947 (pp. 12 and 13), cited the World Federation of Democratic Youth as follows: "The AYD (American Youth for Democracy) is affiliated with the World Federation of Democratic Youth, which was founded in London in November 1945 by delegates from over 50

nations. . . . From the outset the World Federation of Democratic Youth demonstrated that it was far more interested in serving as a pressure group in behalf of Soviet foreign policy than it was in the specific problems of international youth.

"The International Union of Students was cited as follows by the Committee on Un-American Activities in its report of April 17, 1947 (p. 13): 'The World Federation of Democratic Youth brought into being the International Union of Students, which held a meeting in Prague on August 17-31, 1946. The administration and direction of this project was entrusted to a 17-man executive committee of whom 12 were known Communists.'"

"FEBRUARY 13, 1956.

"SUBJECT: THURGOOD MARSHALL, director counsel, NAACP Legal Defense Fund and Educational Fund, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"Thurgood Marshall was a member of the national committee of the International Juridical Association, as shown in the pamphlet, *What Is the I.J.A.?* The special Committee on Un-American Activities cited the International Juridical Association as 'a Communist front an offshoot of the International Labor Defense' (Rept. No. 1311, dated March 29, 1944). In a report on the National Lawyers Guild, prepared and published September 17, 1950, by the Committee on Un-American Activities, the International Juridical Association was cited as an organization which 'actively defended Communists and consistently followed the Communist Party line.'

"A list of officers of the National Lawyers Guild, as of December 1949 (printed in the committee's report on the National Lawyers Guild, p. 18) contains the name of Thurgood Marshall, New York City, among the members of the executive board. He was shown to be an associate editor of the *Lawyers Guild Review* in the issue of May-June 1948 (p. 422). It was reported in the *Daily Worker* of November 30, 1942 (p. 1), that Mr. Marshall, special counsel of the National Association for the Advancement of Colored People, was one of those who submitted a report denouncing lynching and discrimination which was adopted by the national executive board of the National Lawyers Guild. It was also reported in the *Washington Evening Star* (February 8, 1948, p. A-22 and February 12, 1948, p. A-82), that Mr. Marshall, identified as special counsel, NAACP, criticized the loyalty program in a public forum held under the auspices of the National Lawyers Guild in Washington, D.C.

"The National Lawyers Guild was cited by the special Committee on Un-American Activities as a Communist front in Report No. 1311 of March 29, 1944 (p. 149). In the committee's report on the organization, released in 1950, the guild was cited as a Communist front which 'is the foremost legal bulwark of the Communist Party, its front organizations, and controlled unions' and which 'since its inception has never

failed to rally to the legal defense of the Communist Party and individual members thereof, including known espionage agents.

"The Daily Worker of November 24, 1947 (p. 4) reported that Thurgood Marshall was among a group of attorneys who sent a telegram to New York Congressmen asking them to oppose the contempt citations in the case of the so-called Hollywood 10."

"FEBRUARY 13, 1956.

"SUBJECT: HENRY LEE MOON, director, public relations department, NAACP, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"A membership list of the Washington Book Shop which was subpoenaed by the special Committee on Un-American Activities in 1941 contains the name of Henry Lee Moon with address shown as 1206 Kenyon Street NW., Washington, D.C.

"The Attorney General of the United States cited the Washington Book Shop Association as subversive and Communist in letters to the Loyalty Review Board, released December 4, 1947, and September 21, 1948; redesignated April 27, 1953, pursuant to Executive Order No. 10450, and included on the April 1, 1954, consolidated list or organizations previously designated. The Special Committee on Un-American Activities, in its report of March 29, 1944 (p. 150), cited the Washington Book Shop Association as a Communist-front organization.

"Henry Lee Moon, New York, was a member of the national executive council of the National Negro Congress, as shown on the official proceedings of the congress for 1936 (p. 40).

"The Attorney General cited the National Negro Congress as subversive and Communist in letters released December 4, 1947, and September 21, 1948; redesignated April 27, 1953, and included on the April 1, 1954, consolidated list. A. Phillip Randolph, president of the congress since its inception in 1936, refused to run again in April 1940 'on the ground that it was "deliberately packed with Communists and Congress of Industrial Organization members who were either Communists or sympathizers with Communists." Commencing with its formation in 1936, Communist Party functionaries and fellow travelers have figured prominently in the leadership and affairs of the Congress, . . . according to A. Phillip Randolph. John P. Davis, secretary of the congress, has admitted that the Communist Party contributed \$100 a month to its support.' (Attorney General, CONGRESSIONAL RECORD, Sept. 24, 1942, pp. 7687, 7688.) The special Committee on Un-American Activities, in its report of January 3, 1939 (p. 81), cited the National Negro Congress as 'the Communist-front movement in the United States among Negroes.'

"A review by Abner W. Berry of Henry Lee Moon's book, Balance of Power: The Negro Vote, was published in the Daily Worker of May 28, 1948 (p. 12). The review reads, in part;

"As a newspaperman who spent the war years in Washington and

later was associated with the CIO Political Action Committee, Henry Lee Moon has written, in balance of power a helpful survey of Negro suffrage in America. He defends the Negro voter against the charge of venality and corruptibility with the materials of history, and traces the long fight for the franchise.

"It is the only volume brought to our attention which gives a detailed national picture of the Negro vote. It is too bad the author felt impelled to defend the two-party system and the Negro. And it is worse that he chose this otherwise useful contribution as the bearer of his offering of fuel for the cold war."

"A photograph of Henry Lee Moon was published in the June 16, 1932, issue of the Daily Worker (p. 2).

"The Daily Worker of June 17, 1946 (p. 2), reported that one Henry Moon (no other identification shown) was one of the signers of a statement of the Action Committee To Free Spain Now which protested the delay in breaking diplomatic relations with Franco Spain.

"The Attorney General cited the Action Committee To Free Spain Now as Communist in a letter released April 27, 1949; redesignated April 27, 1953, and included on the April 1, 1954, consolidated list.

"The Daily Worker of February 16, 1949 (p. 13), reported that Henry Moon was nominated as commentator of the Voice of Freedom Committee.

"The Attorney General included the Voice of Freedom Committee on the April 1, 1954, consolidated list of organizations previously designated pursuant to Executive Order No. 10450."

"The Special Committee on Un-American Activities, in its report of March 29, 1944 (p. 147), cited the Southern Conference for Human Welfare as a Communist front which received money from the Robert Marshall Foundation, one of the principal sources of funds by which many Communist fronts operate. The Committee on Un-American Activities, in its report of June 12, 1947, cited the Southern Conference . . . as a Communist-front organization 'which seeks to attract southern liberals on the basis of its seeming interest in the problems of the South' although its 'professed interest in southern welfare is simply an expedient for larger aims serving the Soviet Union and its subservient Communist Party in the United States.'

"FEBRUARY 13, 1956.

"SUBJECT: ROBERT L. CARTER, assistant special counsel, NAACP, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"Robert L. Carter wrote an article which was published in the Lawyers Guild Review (vol. VI, pp. 553-54, and 599-601). The Lawyers Guild Review was cited as 'an official organ of the National Lawyers Guild' by the Committee on Un-American Activities, report on the National Lawyers Guild, September 21, 1950 (p. 13).

"The National Lawyers Guild was cited by the Special Committee on Un-American Activities as a Communist front organization in its report of March 29, 1944 (p. 149). It was cited as a Communist front which 'is the foremost legal bulwark of the Communist Party, its front organizations, and controlled unions' and which 'since its inception has never failed to rally to the legal defense of the Communist Party and individual members thereof, including known espionage agents.' (Committee's review on the National Lawyers Guild, September 21, 1950.)

"It was reported in the Times Herald of April 28, 1948 (pp. 1 and 4) that Robert L. Carter, of the American Veteran's Committee, was a sponsor of a conference against anti-Communist legislation.

"FEBRUARY 13, 1956.

"SUBJECT: Toreia Hall Pittman, assistant field secretary, NAACP, 1961.

"The public records, files and publications of this committee contain the following information concerning the subject individual. This report should not be construed as representing the results of an investigation by or findings of this committee. It should be noted that the individual is not necessarily a Communist, a Communist sympathizer, or a fellow-traveler unless otherwise indicated.

"The official proceedings of the National Negro Congress for 1936 (p. 6) listed Mrs. Toreia Pittman, of California, as a member of the general resolutions committee of the National Negro Congress.

"The Attorney General of the United States cited the National Negro Congress as subversive and Communist in letters released December 4, 1947, and September 21, 1948; redesignated April 27, 1953, and included on the April 1, 1954, consolidated list. A Phillip Randolph, president of the congress since its inception in 1936, refused to run again in April 1940 'on the ground that it was deliberately packed with Communists and Congress of Industrial Organizations members who were either Communists or sympathizers with Communists.' Commencing with its formation in 1936, Communist Party functionaries and fellow travelers have figured prominently in the leadership and affairs of the congress * * * according to A. Phillip Randolph, John P. Davis, secretary of the congress, has admitted that the Communist Party contributed \$100 a month to its support.' (Attorney General, CONGRESSIONAL RECORD, September 24, 1942, pp. 7687 and 7688.) The special Committee on Un-American Activities, in its report of January 3, 1939 (p. 81), cited the National Negro Congress as 'the Communist-front movement in the United States among Negroes.'"

Mr. PEREZ. Now, another one of these participants in these mass actions, demonstrations, an organization called CORE. In that connection, I would like to offer for the record Congressional Record session of 1961, page 8349, a speech made by the chairman of this committee, pointing out the connections of members of that organization. With the permission of the chairman, I would like to offer it as Perez Louisiana No. 4.

The CHAIRMAN. It will be admitted as an exhibit.

(The document referred to was marked Perez Louisiana Exhibit No. 4 and is as follows:)

EXHIBIT 4

[From the Congressional Record, May 25, 1961]

ACTIVITIES IN THE SOUTHERN STATES

Mr. EASTLAND. Mr. President—

The PRESIDING OFFICER. The Senator from Mississippi is recognized.

Mr. SCOTT. Mr. President, will the Senator from Mississippi yield to me?

Mr. EASTLAND. I must ask the Senator from Pennsylvania to excuse me, for I have two speeches to make. Thereafter I shall be glad to yield.

The PRESIDING OFFICER. The Senator from Mississippi declines to yield at this time.

Mr. EASTLAND. Mr. President, the agent provocateurs who have descended upon the Southern States in the name of "peace riders" were sent for the sole purpose of stirring up discord, strife, and violence. "Peace riders" is a revered Communist term, an old Communist technique. The movement was master-minded and directed by an organization known as the Congress of Racial Equality, called CORE. This organization is the war department of those who sell hate, collect donations, and sow the seeds of discord in this country. Since its inception, its creed has been lawlessness and its tactics have followed the pattern set by Communist agitators the world over.

Prior to the sit-in demonstrations that started in the southern States in 1960, CORE confined its activities to cities in the North and border States, and received little public notice. With the advent of the lawless sit-in, it moved in and took over the direction of the whole movement. Steve Allen signed a recent fund raising letter given wide circulation by CORE; and in it he said, in part:

"How did the sit-ins, first tried by CORE in 1942 and used every year since, suddenly become southwide? How do the students think of their movement? To give you a personal first-hand understanding I am enclosing a copy of 'Sit-ins: the Students Report,' with a foreword by Lillian Smith and six student articles from representative movements across the South."

In my judgment, one of its objectives is to manufacture incidents, and thus raise money, from the dupes for the international Communist conspiracy.

The booklet attached to the letter contains the maudlin stories of the student trespassers that were trained by CORE, and were arrested in various cities in the South when they violated the law by trespassing on private property. As Allen points out, the foreword of the pamphlet is written by Lillian Smith, the leading white southern integrationist, a member of the advisory committee of CORE, and the author of the most abominable book written in the 20th century, the miscegenation novel "Strange Fruit." Lillian Smith has also been associated with numerous organizations and activities cited as being Communist or Communist fronts.

I submit that when a person belongs to a large number of Communist-front organizations that follow the policies of the international Communist conspiracy, that person is aiding and abetting the Communist movement in the world—a movement which, if not halted, will result in a blood bath in our own country, because the United States will fight, if necessary, in order to prevent Communist domination of our country.

The "freedom ride" planned by CORE, and commenced in Washington on May 4, was the master effort of this organization. I have been informed that it was devised deliberately as a prelude to various high-level meetings in Europe, as a propaganda method to embarrass the Government of the United States in the handling of international affairs. Certainly those participating in the ride have been guilty of such practices of embarrassment, many times in the past.

Long before the bus reached Alabama, certain members thereon were involved in instances of violence. The Washington Evening Star, of Monday, May 15, 1961, reports that at Rock Hill, S.C., two men were beaten, and that one of them was Albert Bigelow, 55, the former Navy captain who ran afoul of the law when he attempted to sail a ketch into the Pacific Ocean Lucifer Testing Area, in 1958, to protest the nuclear bomb test. The same news story reports that a day later, at Winnsboro, S.C., one Thomas, a Howard University student, and James Peck, 47, of New York City, were charged with trespassing when they attempted to eat at a roadside restaurant. Strange as it may seem, this selfsame Peck was also aboard the ketch in the Pacific Ocean when it ran afoul of the law attempting to sail into the nuclear testing area in 1958. Peck was the first "hero" of the "freedom ride." He came back from Birmingham parading the bandages and stitches received in the altercation that took place at the bus station.

It must be admitted that this is the closest that Peck ever came to "warfare" of any kind. According to a recent news story in the New York Herald Tribune, in World War II, when Peck was called up in the draft, he declared himself a conscientious objector. Unlike most conscientious objectors at that time, he would not become a medic, nor would he agree to take part in other noncombat activities connected with the military. As a result, he spent 3 years in the Federal prison at Danbury, Conn. He first became associated with the Congress of Racial Equality in 1948.

The Herald Tribune's story reports that in 1949 Peck chained himself to a railing in the White House and staged a sitdown strike, which was ended by Secret Service agents.

Peck was arrested in Nevada in 1957, along with others, for trying to force their way through the gate of an Atomic Energy Commission proving ground, allegedly in the cause of pacifism.

The next year Peck was again under arrest, this time as a member of the crew of the ketch previously mentioned in the nuclear testing area of the Pacific.

There are strong indications that Peck was associated with the Committee for Nonviolent Action, which conducted demonstrations against the Polaroid building shipyards of the Electric Boat Co. in Groton, Conn.

Mr. President, do I have to say more to show that this man, the leader of CORE, is disloyal to his country? Well, I am going to give more.

Back on August 31, 1947, Peck was arrested at Cliffside Park, N.J., and charged with disorderly conduct. In July and August of that year he was active in demonstrations charging racial discrimination at Palisades Park and Cliffside Park, N.J.

The Communist paper Peoples' World, of July 23, 1960, reports that a certain Jim Peck was scheduled to lead a 2-day conference of opponents of the death penalty in the Chessman case.

While the current letterheads of CORE do not carry the name of James Peck, reference to those used in 1956 indicate that his title was "editor" of a publication called Corelator, which was the official publication of this organization.

Mr. President, in my judgment, this man is a Communist agitator and organizer of the most dangerous kind.

CORE could not rely on "student trainees" for the master "freedom ride." Its core were its own agent provocateurs with the longest possible record of experience in activities inimical to the security and welfare of the United States.

Mr. President, it is incredible that the American people can be humbugged and deceived by an organization such as this.

I have another letter mailed by CORE on February 16, 1958. It describes what I mentioned at the outset in regard to CORE's original activities in northern and border cities in this language. It reads:

"In the cities where CORE has operated, advances toward integration have occurred. In recent years, the border cities, St. Louis and Baltimore, have seen dramatic CORE victories. The method works. When I first joined CORE's

advisory committee years ago, I could not have foretold that the ratio of success to failure would be so high."

This letter is signed by one A. J. Muste, who is still active on the advisory committee of CORE. Who is A. J. Muste?

In 1957 A. J. Muste got up a delegation for the purpose of observing the procedures of the Communist Party's 16th National Convention on February 9 to 12, J. Edgar Hoover said:

"The Communists boasted of having impartial observers cover the convention. However, most of those so-called impartial observers were handpicked before the convention started and were reportedly headed by A. J. Muste, who has long fronted for Communists. * * * Muste's report on the convention was biased, as could be expected."

Those are the words of the great Director of the Federal Bureau of Investigation, Mr. J. Edgar Hoover. Who wants further proof of the Communist origin of this group that wants to plant discord in this country on the very eve of international conferences which mean so much to the welfare of future generations of Americans?

Muste has been connected or associated with no less than 82 Communist-front organizations or activities. A more complete story of his relation to banning nuclear weapons tests and his activities in relationship to the Communist conspiracy will be found in material which I shall ask to have printed in the Record. If the American people had to depend on pacifists like Peck and Muste for the defense and security of this country, there would be no country—only a Russian satellite.

Mr. President, in further examining the individuals who make up the advisory committee of the "War Department for Racial Agitation," we find a close interrelationship to the NAACP. Allen Knight Chalmers, longtime national treasurer and member of the board of directors of the NAACP, is on the advisory committee of CORE. A report of the House Un-American Activities Committee on Chalmers' connections with organizations or activities connected with the Communist conspiracy is included, and I ask unanimous consent that several inserts bearing on this subject may be made a part of the Record at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. EASTLAND. Mr. President, Dr. Algernon D. Black, longtime member of the national board of directors of the NAACP, is also a member of the advisory committee of CORE. Dr. Black's record, as revealed by the House Un-American Activities Committee, is replete with connections in organizations and activities connected with the Communist conspiracy. The long record of Dr. Algernon D. Black, is revealed by the records of the House Un-American Activities Committee.

Mr. President, I ask unanimous consent that this record be printed in the Record at the conclusion of my remarks.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Mississippi? The Chair hears none, and it is so ordered.

(See exhibit 2.)

Mr. EASTLAND. Mr. President, Earl B. Dickerson, onetime national vice president and a member of the national legal committee of the NAACP, is also listed as a member of the advisory committee of CORE. The long record of Earl Dickerson's affiliation with Communists or Communist-front activities is available from official sources. I ask unanimous consent that this record be printed in the Record at the conclusion of my remarks.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Mississippi? The Chair hears none, and it is so ordered.

(See exhibit 3.)

Mr. EASTLAND. Mr. President, A. Phillip Randolph, longtime vice president of the NAACP, is also a member of the advisory committee of CORE. Randolph's record, as revealed by the records of the House Un-American Activities Committee, is also available from official records. I ask unanimous consent that it be printed in the Record at the conclusion of my remarks.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Mississippi? The Chair hears none, and it is so ordered.

(See exhibit 4.)

Mr. EASTLAND. This list, Mr. President, is sufficient to illustrate the nature of the interlocking directorate and that the interlockers have also been connected with many organizations and groups other than CORE and the Communist movement.

Mr. President, it is interesting to compare the advisory committee of CORE as it existed in 1956 and its makeup in 1960 and 1961. As long as CORE was confining its activities to Northern and border cities, it is a fair inference that certain classes of agitators were indifferent to its operation. When it moved into the South, Martin Luther King and Ralph Abernathy, the two preachers who have been in the forefront in agitating violence against the white people, joined hands with the masterminds of CORE in organizing the freedom riders and became members of CORE's advisory committee. One might say that Martin Luther King took over where CORE left off—or has CORE left off? At least King attempts to claim credit for the organization of parties for the subsequent buses.

Martin Luther King and Abernathy are one of a kind with the so-called Rev. Elton Cox, one of the original Freedom riders. He is the person who, when arriving in New Orleans, called for marry-ins—racial intermarriage—because love is colorblind anyway. Mr. President, no language on earth is more intended to incite and foment violence in southern areas, or in any area, than is this.

James Peck held a press conference at the office of Charles S. Zimmerman, vice president of the International Ladies' Garment Workers Union, 218 West 40th Street, when he returned from Birmingham. Also present at that press conference was Henry Thomas, the 19-year-old Negro boy who was arrested with Peck at Winnsboro, S.C., charged with trespassing when they attempted to eat at a roadside restaurant. Charles S. Zimmerman is a member of the advisory committee of CORE. The record of Charles Zimmerman's association with Communist-front activities will appear at a later point in my remarks.

Mr. President, I ask unanimous consent that the record be printed in the Record at the conclusion of my remarks.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Mississippi? The Chair hears none, and it is so ordered.

(See exhibit 5.)

Mr. EASTLAND. Mr. President, since CORE has started directing its operations into the southern areas of the United States, other leaders in organized labor have joined the directorate of CORE. Foremost among these is Walter P. Reuther. Reuther has spent years trying to obtain respectability since those days in 1934 when he and his brother worked in an industrial plant in Russia. The words that they transmitted back to the United States in a letter which appeared in the August 14, 1948, issue of the Saturday Evening Post are well worth repeating today. The letter ended with the statement:

"Carry on the fight for a Soviet America."

Mr. President, that is what CORE is doing today. It is carrying on the fight for a Soviet America.

The portions of the letter as appearing in the Congressional Record of August 2, 1956, will be attached at the end of my remarks, along with a report of the House Un-American Activities Committee in regard to Reuther's association and affiliations with Communist or Communist-front activities in the United States.

Mr. President, I ask unanimous consent that the portions of the letter and the report be printed in the Record at the conclusion of my remarks.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Mississippi? The Chair hears none, and it is so ordered.

(See exhibit 6.)

Mr. EASTLAND. Mr. President, other members of the advisory committee of CORE who have been listed at one time or another as being connected with front organizations of various kinds and character are: Roger N. Baldwin, Lillian Smith, Ronald B. Gittelson, Ira DeA. Reid, and Goodwin Watson.

I ask unanimous consent, Mr. President, that the record of their association with Communist-front activities be printed in the Record at the conclusion of my remarks.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Mississippi? The Chair hears none, and it is so ordered.

(See exhibit 7.)

Mr. EASTLAND. Mr. President, is any further proof necessary to establish that the "freedom riders" have been sent into the South with the deliberate intent of fomenting and provoking violations of the laws of the States which they intended to visit and did visit? If these be pacifists, it is a tragic commentary on our times that the Governors of Alabama and Mississippi have to call out the 31st National Guard Division, members of which have been in the forefront in sacrificing their lives in the valiant defense of this country in Korea, in World War II, and in World War I, to defend—and protect—these self-proclaimed pacifists from violence. No area on the face of the earth has more demonstrated its ability to maintain peace and domestic tranquility than the Southern States of our country. In spite of outside agitation, the harmonious relationship, the mutual affection that today exists there between the white and colored races is more marked than it is in any other area on the face of this earth where the black and white races live together.

Mr. President, the day has come when these agent provocateurs must be stopped.

The day has come, Mr. President, when the Communist movement must be stopped, and this is part of the Communist movement inside the United States.

Mr. President, I salute the Governor and the officials of my State for the prompt, efficient, and peaceful treatment that they extended to these riders who entered the State of Mississippi for the deliberate purpose of violating the laws of Mississippi and fomenting strife and discord.

I salute the people of Mississippi for their courage, their intelligence, and their patience. This is the first time they have come face to face with the worldwide Communist conspiracy. They have acted well.

I ask unanimous consent that certain documents bearing on the Communist record of people to whom I have referred be printed in the Record at the conclusion of my remarks.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Mississippi? The Chair hears none, and it is so ordered.

(See exhibit 8.)

Mr. PEREZ. And, Mr. Chairman, in connection with the greatest of all the mass demonstrators, the boycott artist carrying out the same plan, the so-called Rev. Dr. Martin Luther King, I would like to offer for the record, for the information of the members of Congress, if they have not seen his connections, first—this has been handled quite a bit—it is a paper gotten out by the Georgia Commission on Education with regard to the Highlander Folk School, Martin Luther King's participation; also, I have the Baptist Bible Tribune indicating King worked with Red-front educational fund. I also have a copy of Common Sense, headlined, "Martin Luther King, Marxist Tool and Race Agitator."

The CHAIRMAN. They will be admitted as exhibits.

Mr. PEREZ. Mark them "Exhibit Perez No. 5."

(The documents referred to were marked "Perez Louisiana Exhibit No. 5" and are as follows:)

HIGHLANDER FOLK SCHOOL

MONTEAGLE, TENNESSEE



PICTURED HERE (foreground) is Abner W. Berry of the Central Committee of the Communist Party. On the first row are Reverend Martin Luther King (2nd from right) of the Montgomery Boycott, Aubrey Williams (3rd from right) president of the Southern Conference Education Fund Inc. and Myles Horton (4th from Right) the director of Highlander Folk School. These "four horsemen" of racial agitation have brought tension, disturbance, strife and violence in their advancement of the Communist doctrine of "racial nationalism".

S. J. Percy - 69
(X)
#5

HIGHLANDER FOLK SCHOOL
MONTEAGLE, TENNESSEE



REVEREND MARTIN LUTHER KING addresses the assemblage. Reverend King, president of the Southern Christian Leadership Conference is best known for his activities in the Montgomery Boycott, Montgomery Improvement Association and the March on Washington which he conducted with Bayard Rustin. The *Daily Worker* lists Bayard Rustin as one who attended the 1957 convention of the Communist Party USA. Bayard Rustin is identified in the *Daily Worker* as secretary to Reverend Martin Luther King.

The activities of Reverend Martin Luther King represent the ultimate in "civil disobedience." It is doubtful that Reverend King could have carried on such a program without outside leadership and financing; Bayard Rustin is perhaps the leading expert on "civil disobedience" in this country.

The Southern Christian Leadership Conference is a new organization founded by Reverend King for region-wide agitation of racial violence and strife.

EXHIBIT 5, PEREZ, LOUISIANA

Baptist Bible Tribune

FOR BIBLE BELIEVING BAPTISTS

(Founded June 25, 1957)

VOL. XIV

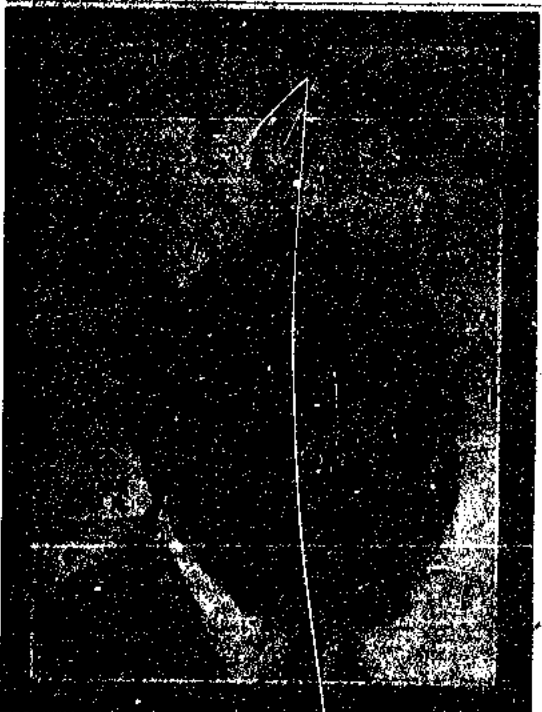
SPRINGFIELD, MISSOURI, FRIDAY, JANUARY 31, 1964

NO. 28

Martin Luther King Jr. Worked With Red-Front Educational Fund

To probe the background and activities of CORE, and to determine the extent of any Communist infiltration in CORE's ranks, staff writer Danny Walsh spent two months studying government and police files and interviewing officials in Washington, New York, Chicago, New Orleans, Louisville and St. Louis.

The Rev. Martin Luther King Jr. is by far the best known member of CORE's advisory committee, although his primary job is president of the Southern Christian Leadership Conference. Activities of the conference are discussed in this article.



By DANNY WALSH

Staff Writer

(Reprinted from the St. Louis Globe-Democrat with the permission of that great American newspaper.)

MARTIN LUTHER KING JR.'s civil rights group has worked jointly with the Southern Conference Educational Fund Inc., a large Communist front organization, according to evidence forwarded to federal investigators in Washington.

The evidence includes letters written by four persons identified as Communists in congressional testimony. The documents have

"CORE" is the abbreviation for the Congress of Racial Equality.

been compiled by the Louisiana Joint Legislative Committee on Un-American Activities in a 122-page report.

Dr. King is a member of CORE's advisory committee, but his primary function is president of the Southern Christian Leadership Conference, an organization he founded in 1955 to give him organizational backing after his successful Montgomery, Ala., bus boycott.

Mrs. Roosevelt Quit

U.S. documents show that Dr. King's SCLC has joined the Southern Conference Educational Fund in sponsoring newspaper ads and arranging rallies. The late Mrs. Eleanor Roosevelt resigned from the SCEF in April, 1960, when she discovered its Communist affiliations, some of the letters show.

The SCEF has been described in Senate testimony by an ex-Communist as the type of organization "intended to lead to class hatred,

BEST COPY AVAILABLE

Here and There

CHERRY, N.H. — For One Day... (text continues) ...

Dr. Bennett observed his third birthday on Jan. 1. His address is P.O. Box 288, Cherry, N.H. His telephone number is EX 1-2881. Order 216 — for those who wish to congratulate Mr. And Mrs. Bennett will be right there.

BAYTON, OR. — Public Baptist church, temporarily meeting in an elementary school, has made progress since Charles C. Lyon became its pastor last July, when the membership was 14. During the last six months, they have grown 63 additional to the church by a profession of faith in Christ and baptism; in addition, there have been 5 professions of faith in Christ to homes.



CHARLES C. LYON

and hospital, and 10 additional to the church by letter. The membership is now 65 and the weekly Sunday school attendance is between 70 and 80 with a high attendance on Jan. 18 of 97.

Mr. Deacon, pastor Broadway Baptist church, Paterson, N.J., was the speaker in a week's meeting in the church. The congregation contributed to the support of Randall and Mrs. Ruby and Edward and Mrs. Esther, Baptist Bible Fellowship missionaries.

PLATTSMOUTH, N.Y. — Donald L. Schaeffer has accepted the call to the pastorate of Bethany Baptist church, Rochester, N.Y.; and will be

Psychiatrist Says Woman Charged With Killing George Hodges is Insane

The following is from the Jan. 20 issue of the Jacksonville (Fla.) Journal.

By REX EDMONDSON

Journal Staff Writer

A psychiatrist testified today in Criminal Court that in his opinion Mrs. Sara Thelma Luckie is insane and should be committed to the Florida State Hospital at Chattahoochee.

The 39-year-old Mrs. Luckie, who is charged with manslaughter in the slaying of Rev. George Earl Hodges last April 8, has been in a detention room at Duval West-Center State Reformatory.

Judge Hans O. Tamm delayed the start of the trial, expected to take a week or 10 days, and appointed a second psychiatrist, Dr. William H. McGinnis, to examine Mrs. Luckie and report to the court tomorrow at 9:30 a.m.

Dr. William H. Ingram examined the defendant Saturday and yesterday following a motion for suspension of inquiry filed by defense counsel John P. Lewis last Friday.

Ingram said that Mrs. Luckie "has no mind." He said that he did not believe that she is sane.

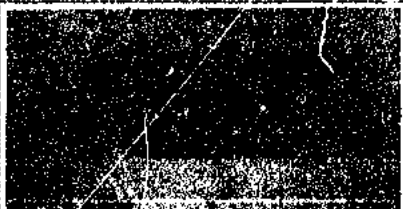
Ingram said that Mrs. Luckie showed very little emotional response when he examined her, at first being uncooperative, but gradually "warming up."

The psychiatrist said Mrs. Luckie showed some kind of lunacy, that he was afraid she might recover in these madhouse and therefore thought it best for her own good that she be locked up over a week.

Luckie was escorted to court today by two deputy sheriffs and sat impassively on the psychiatrist's table of his findings.

On cross examination by County Solicitor Edward H. Scott, Dr. Ingram said that Mrs. Luckie might be dangerous to others as well as herself. Scott asked specifically about dangerousness directed against members of Beaver Street Baptist Church of which the Rev. Mr. Hodges was pastor.

"Mental illness being unpredictable," Ingram replied, "I do not



LEDAMON, MO. — Berwin Cummins, pastor Tabernacle Baptist church, was elected chairman of the Missouri-North Arkansas Baptist Bible Fellowship at the organization's January meeting, which was held in Tabernacle church. Other officers elected were Holmes Moore, pastor Bible Baptist church, Maplewood, secretary; Jim Finson, pastor Baptist Temple, Aurora, vice-chairman; Jim Maggard, pastor Bible Baptist church, Appleton, treasurer; and Bill Dowell Jr., pastor Temple Baptist church, Springdale, Ark., chairman of the youth camp. In the picture are the producers attending the meeting.

It was the right thing to do, the night (take a good look) Ingram said Mrs. Luckie has had strong urges in the past to drive her car into a telephone pole. He said that he examined her in 1952 at a local hospital, after she took an overdose of sedatives, but that the psychiatrist was never completed because she was uncooperative.

Lewis asked Ingram if he recalled who asked him to examine Mrs. Luckie at that time.

"I believe it was the Rev. Mr. Hodges," Ingram said.

Ingram said that during Saturday's examination Mrs. Luckie told of how the Rev. Mr. Hodges once suddenly appeared to be sitting between her and her husband as they rode in their car.

"My husband and I," Ingram said, "and she did not tell her husband of this experience." Ingram also said that some of the delusions Mrs. Luckie has had were of sexual variety, with the Rev. Mr. Hodges seducing her husband. And, he added, she also said she had seen the Rev. Mr. Hodges "in heaven."

Judge Tamm asked Ingram if Mrs. Luckie might have been able to learn insanity, Ingram replied that in his opinion Mrs. Luckie is not "sophisticated enough or knowledgeable enough to do so."

"It would require quite a bit of mental manipulation," he said. Lewis told the court that he would have had Mrs. Luckie's unhelpful moodiness ago except that she would not cooperate.

Tamm today qualified about 150 witnesses for the July 1959 and directed them to report back to court on Jan. 21.

If the court does not grant the suspension of inquiry motion or order Mrs. Luckie's commitment, then the trial will proceed as scheduled.

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organized his duties on Feb. 1. Schaeffer began his duties on Feb. 1. Schaeffer began his duties on Feb. 1. Schaeffer began his duties on Feb. 1.

Three years ago, the weekly offering of Bible Baptist church averaged \$25. Now they are above \$500. The church owns property valued at between \$50,000 and \$60,000, with a past of \$25,000.

Schaeffer, a native of Florida, is a graduate of Baptist Bible College and Mrs. Schaeffer are the parents of two sons, ages 21 and 9 years.

VANCOUVER, WASH. — Jim Hall, his family, and 7 other people were on last Oct. 8 for a service.

They were 10 people in all, with the exception of two leaders, no one appeared for Sunday services except Hall and his family.

But on the evening of Dec. 25, there were 10 people besides the Hall family; since then, from 11 to 15 have been present for each service.

Those pastors and friends of acquaintances in that area who might be interested in the work should write to Rev. Jim Hall, 1201 West 104th St., Vancouver.

Baptist Bible College

FOR BIBLE TEACHERS AND STUDENTS

THE 4 **Friday, January 11, 1935**

Members of the Executive Committee of the Southern Baptist Convention, meeting at Nashville, Tenn., today adopted a resolution to send a letter to the Southern Baptist Convention, to be held at Memphis, Tenn., in 1935, to urge the Convention to take action to secure the passage of a law to protect the rights of the colored people in the South.

The resolution was adopted by a vote of 100 to 0. It was the first time in the history of the Convention that a resolution of this kind has been adopted.

The resolution reads in part: "Resolved, That the Executive Committee of the Southern Baptist Convention, meeting at Nashville, Tenn., today adopted a resolution to send a letter to the Southern Baptist Convention, to be held at Memphis, Tenn., in 1935, to urge the Convention to take action to secure the passage of a law to protect the rights of the colored people in the South."

HOW PERFECTLY LOVELY IT IS

Remember the editorial on religiousness in the Christian Index two weeks ago about the Executive Committee of the Southern Baptist Convention? The Index is the official weekly of the Georgia Baptist Convention.

That editorial said that last September the Executive Committee, meeting at the Baptist building at Nashville, Tenn., refused to allow representatives of the Southern Baptist papers to know what the committee was doing. There are two paragraphs from that editorial.

Editors, state secretaries, agency and industrial heads have known a long time that the committee several years ago they were not welcome in some of the important meetings going for a specific consideration. You followed in making themselves conspicuous since a word of information would be presented before the full committee.

The welcome must not come in a meeting last week in the administrative committee. The 30 or 35 who went to the debate were told quickly by the chairman it was a "closed meeting" which meant nothing would be revealed. It also developed that "we will fight in a committee after the others are gone."

This week we have some more information for you on this Executive Committee; and this that two weeks ago, it is authentic, and it is official. It is from the February, 1934, issue of "The Baptist Student," a monthly publication of the Sunday School Board of the Southern Baptist Convention. The "Student" is a bright, clean, happy, bi-weekly publication. You will find a sample of it on page 5 of the issue in question. David K. Alexander is discussing with Southern the matter of devotional Bible reading.

Don't struggle with the book. If some part strikes your imagination, don't stop to struggle with it at that moment. Pass gently over it. You may return to that very passage later as a moral food for your soul.

The "Student" carries four green slick pages of "What Your Denomination is Doing," by W. C. Fields, public relations secretary of the Executive Committee.

In this February issue, Dr. Fields tells us, among other things, how open and above board and feeling and loving and cheering the Executive Committee is.

As the members enter a new green and silver building, not eight miles from the old room with desks and a meeting room, they

don't, and does with some of the most important matters in the life of the Southern Baptist Convention.

"We don't fight, but that 'What Day' in there."

"We are going to give you one of these little green books. It's black and white, it's compact, it's handy and it's free."

WHAT YOUR DENOMINATION IS DOING

From thirty parts of the entire, this month fifty-five men and women will converge at Nashville.

They will enter a new green and silver building with eight acres, built down in a roomy prior done like a Baptist church, and deal with some of the most important matters in the life of the Southern Baptist Convention.

They are the members of the Convention's Executive Committee. Two hundred, however, laymen, and thirty-four preachers elected by the Southern Baptist Convention currently make up the Executive Committee.

Notice that it is the Executive "Committee" rather than the Executive "Board." This is a special choice of words to indicate the special power of the body.

Charles H. Haver, of Mobile, Alabama, will call the meeting to order, and the group will spend hours seriously considering actions which will affect the welfare of ten million Southern Baptists.

The bylaws of the Southern Baptist Convention constitution say: "The Executive Committee shall be the fiduciary, the fiscal, and the executive agency of the Convention in all its affairs not specifically committed to some other board or agency."

The Southern Baptist Convention meets only one week a year (in May or June), but the work of the Executive Committee goes on the year round. The Executive Committee acts in specific areas for the Convention between annual meetings.

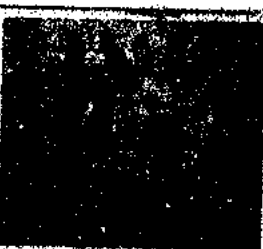
The members of the Executive Committee are charged with the responsibility of studying the work of the Convention's various boards, committees, institutions, and other agencies. They make recommendations to the Convention to coordinate more effectively their total work of all the agencies. They likewise recommend to the Convention the plan for the Cooperative Program and the allocation of all unappropriated funds.

Dr. Foster W. Keith heads the staff of the Executive Committee. An executive secretary-treasurer, he is the administrative officer. Under his leadership the staff distributes funds received by the Convention, publishes and promotes the general work of the Convention in co-operation with the agencies of the Convention, and performs other functions for the Convention.

The four annual meetings of the body are always given to the public and to Baptists in particular. Meetings are held in Nashville in February, and September, and two each year are held in connection with the annual meeting of the Southern Baptist Convention.

Will you ever again, in view of the Executive Committee's treatment of its own people last September, be in view of what the editorial public relations secretary says in that the paragraph, be able to think of a hypocrite when thinking of the Executive Committee of the Southern Baptist Convention?

It is a new green and silver building with eight acres, built down in a roomy prior done like a Baptist church.



PORT ARTHUR, TEX. This group from the young people, interdenominational, and former participants of this Baptist church are gathered around their "Mission Tree." They had a Christmas party and decided that, instead of exchanging gifts, they would decorate a Christmas tree with candles and give it to the church for its 35th Sunday mission offering.

Every 34th Sunday, the church gives all the offerings from the spheres for missions. The tree offering totaled \$25. The total offering for Dec. 26 was \$274.11, of which \$492.11 was for missions. There were 46 in Sunday school. In 1904, the church's gifts to missions was \$250 above that of 1903. The total given to missions was \$1,562.62. Jack McMillan, is Sunday school superintendent, and B. G. Howden is pastor.

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CLIMAX OF THE NATIONS

The Worship of Power

EDITOR'S NOTE: We are beginning here today a series of articles on the climax of the nations of the earth, Jew and Gentile, in the last days of this age. This article is introductory. It is from the book, "World Crisis and the Prophetic Scriptures," by Wilbur M. Smith, and reprinted with the permission of the publisher, Moody Press, Chicago, Ill.

By **WILBUR M. SMITH**

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1. Thomas Hobbes

WHILE it is true that there have been wars from patriarchal days down to the present, requiring the accumulation and use of force to gain force or another, and while the mighty rulers of this earth — Kerensky, Alexander, Julius Caesar, Charlemagne, and Napoleon — we all had great armies, I think we may say with accuracy that the actual worship of power, the pursuit of power for power's sake, the setting forth as a deep principle of life the preeminence of power, did not develop until the 17th century.

Perhaps this development was initiated with Thomas Hobbes (1588-1633), who has been described as "the first Englishman to present a system of political philosophy that can stand among the great visions of history. His work placed him at once in the front rank of political thinkers; and his theory became, from the moment of its appearance, the center of animated controversy and vigorous influence throughout Western Europe."

Hobbes published his *De Cive* (The State) in 1642, and his far more famous *Leviathan* in 1651. The central theme of Hobbes' whole concept of political economy is that the will of the state is the source and criterion of all right. Human desires, in any form, are regarded as "perpetual and restless desire of power after power, that ceaseth only in death."

His theory worked out into the famous phrase, "nothing is common to men, that is, a war of all against all." It is a theory, which, everyone admits, "is founded on the notion that man is purely egoistic in his emotions, and there exists no distinction of right and wrong, and that the impulses which move men are the passions which are born in them, and that there is no standard by which any of these passions may be judged morally different from any other."

Hobbes' whole concept of the state makes a perfect preparation for the coming of Anti-Christ, for Hobbes' marked on an unbroken sheetness to the sovereign, no matter what the sovereign conceived, setting politics above religion and morals.

2. Charles Darwin

THE second strong influence in European thought, creating the idea of power, was, of course, Charles Darwin (1809-1882), with his *Origin of Species*, published in 1859. The late Professor Benjamin Kidd calls the publication

of this book "by far the most important event in the history of the modern West." In his once much discussed work, *The Science of Power*, Prof. Kidd says: "Within half a century the *Origin of Species* had become the Bible of the doctrine of the supremacy of force. The hold which the theories of the *Origin of Species* obtained on the popular mind in the West is one of the most remarkable incidents in the history of human thought."

The theory of the preeminence of the animal world as a result of selection through struggle and merciless war was immediate. Everywhere throughout civilization an almost inconceivable influence was given to the doctrine of force as the basis of legal authority. The doctrine of the official Darwinian naturalism became embodied in the world policy of modern Germany. This was evident in 1914, how little did Kidd know what the philosophy of Germany, based on evolution, would bring about!

3. F. W. Nietzsche

THE third powerful force in European thought in relation to this lust for power was a blameworthy yet original thinker, the 19th century, F. W. Nietzsche (1844-1900). He affirmed that Christianity "is the one great error, the one enormous and tremendous perversion of the one great instinct to become a man, which no other power has known, no understanding, no understanding, and no pity... the one inwardly born of mankind." He believed that the only path of any one life is necessary by the impulse of power this life can achieve.

Nietzsche's driving force of power into five groups: political force, vital energy, mental or spiritual force, moral or political mastery, and humanity, and a generalization of the reality of the law which he called "I shall rule," said by Nietzsche, "for the smallest power and fortune of his will... I value the power of a will to know such relations with torture it produces and can come to its advantage." Nietzsche went on to say that "civilization belongs to the essence of the living, to the maintenance of the inherent will to power."

Nietzsche's famous book, *The Will to Power*, probably had more influence over the political thinking of Germany in the last 19th century than any work written since the time of Hegel. For this reason let me dwell on it a moment longer. At the close of this work he says:

"This universe is a monarchy of energy, without beginning and end, a fixed and certain quantity of energy. It is not a light, no most concealed, strongest, and most undeviating

form of the blackest darkness? This could be the will to power) and nothing else. And even if you yourself are this will to power — and nothing less! — the closely identified this doctrine with the evolutionary hypothesis. Early in the 20th century he declared: "The end of the species is only a result of the growth of the species — that is to say, of the overcoming of the species on the road to a stronger life. Distinct life."

This philosophy, no doubt that no one for "thousands of years before" had been so inspired as he, was the one that kept pounding into the ears of millions who had lost contact with the life of God, "I shall rule! God is dead!"

This is the one who insisted on the absolute abolition of all morality. This is the one who glorified and called for wars, Germany followed this false prophet, and also got the wars her conqueror promised.

It should be remembered that it was Nietzsche who wrote the famous "disobedient work," *The Antichrist*, for all of his thinking would lead him straight to the worship of that which he called "the will to power." It works like an organic cell: it feeds and does violence. It wants to regenerate itself — necessarily, it wants to give birth to "its own, new and all mankind at his feet."

It was Nietzsche who really gave to the Western world his concept of superman, which "at bottom is a denial of rights to the mass of men. The society he pictured was recruited from blood and steel and stood for barbarism. In the first world war, some German writers published plays in which they affirmed that Nietzsche's government had become incarnate in the leaders of the German army of a superman was, not Alexander or Napoleon, but — Cesare Borgia!"

This exaltation of and lust for power in Germany at the end of the 19th and the beginning of the 20th centuries — particularly at the end of those two world wars, and now manifesting itself with such terrible reality in Russia — probably found its most terrible realization in the words of Heinrich von Treitschke, for a generation the brilliant, masterful influential Professor of History at the University of Berlin.

He said, "The aim of weakness in politics is the aim against the Holy Ghost."

Here in dreadful concentration, in the philosophy of one man, master of the minds of so many millions in his generation — and in the two generations that have followed — do we find so many of the New Testament concepts of the last days:

- A hatred of God.
- A bitter antagonism to Christ.
- A call for supermen, especially Anti-Christ.
- A lust for war.
- The abandonment of moral standards.
- The exaltation of selfish power.
- The praise and practice of cruelty, accomplished by pride.

Let great power be placed with men whose philosophy is Nietzsche's — and they are increasing by millions — and you have a stage set for the last days.

Evangelism

DON GLADSON, Baptist Bible Fellowship missionary to Mexico,

was the principal in a series of meetings in Temple Baptist church, Houston, Tex. There were 22 professions of faith and baptisms. It was the 18th anniversary of the pastor.

church. There were 220 in Sunday School.

EVANGELIST PAUL E. AGUE

was with W. B. Baptist Temple, Wadsworth, Okla., at Sunday

pastor. There were 15 professions of faith in Christ and 18 additions to the church. Two men returned for the ministry. In spite of bad weather, the audience was filled every night, according to the pastor.

MOLINE, Ill., South Moline Baptist church, 4000 20th St., has made considerable progress since

dos K. Tietz became its pastor 14 months ago. The average weekly

Sunday school attendance is 90. The church classes have increased from 7 to 12. During Mr. Tietz's

pastorate, there have been 70 additions to the church, 54 of them by profession of faith in Christ and baptism. The congregation now

has in missions a total of 34,177. An special missions offering last

Christmas totaled \$600.50. The

church has added two Baptist Bible Fellowship missionary families to its list for support. Mr. and Mrs.

Timothy Balliet have been on the church staff since they were graduates from Baptist Bible College last May. William Mr. Tietz:

"I have been Baptist Bible College graduate looking for a place to minister. I was here in the Illinois Wisconsin Baptist Bible College."

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BAPTIST BIBLE TRIBUNE, FRIDAY, JANUARY 21, 1964

Wilson's 25th Anniversary

\$2,300 RAISED IN CONFERENCE AT HUTCHINSON

By LOUISE SMITH

HUTCHINSON, Kan.—Westside Baptist church's 25th annual conference raised \$2,300 for missions. It was \$200 above the goal set. The writer is pastor of the church.

We had a joyful meeting in conjunction with the conference. Don Brown of Conway, Mo., was the evangelist. Dr. Brown preached with power. There were 11 professions of faith in Christ.

We had a number of missionaries present. Gerald Board and his family came from the Nevada Indian reservation, and Mr. Board did a number of baptisms. He is able to preach in the different Native languages. Howard Quisenberry of Hutchinson, Mo., was present from the Fellowship. Mr. Quisenberry told us of the great work the Baptist Bible Fellowship is doing in the Pacific.

In addition to its support of foreign missions work, Westside church for the next year will contribute to the work of evangelist Brown and Evangelist J. Paul Lambert.

Westport Baptist church, Clark, Mo.; David McKee, pastor; Baptist church, Point St. Louis, Mo.; Louis McAdoo, pastor; Jones Grove Baptist church, Oklahoma City, Okla.; Robert McCall, pastor; Bible College, Springfield, Mo.; Ray McLaughlin, pastor; Calvary Baptist church, Junction City, Kan.; Keith Pless, evangelist; Wichita; Jacob Priest, associate pastor; Calvary Baptist church, Bellevue, Calif.; Bert Rector, pastor; Baptist

A picture of ministers and their families attending the Wichita Tabernacle's 25th anniversary, will be found on the following page.

Temple, Grand Prairie, Tex.; Michael Shopp, pastor; Grace Baptist church, Wichita; Louise Smith, pastor; Westside Baptist church, Hutchinson.

Ray L. Smith, Baptist Bible Fellowship missionary to Ethiopia; Wm. H. Wambach, pastor; Bible Baptist church, Dodge City; Jack Waterman, Redding, Kansas; Bill Whitfield, associate pastor of Wichita Baptist Tabernacle; Ray W. Wilson, Baptist Bible Fellowship office, Springfield, Mo.; Lloyd Wilcox, pastor; Wayne Wood, Baptist church, Corpus Christi, Tex.; and Arler D. (Bud) Worthington, Aurora, Colo.

THEY READ
THE TRIBUNE

These are some of the 25th anniversary services of Wichita Baptist Tabernacle, Wichita, Kan. Art Wilson (from left) is boarding a plane for the Holy Land. Mrs. Wilson is expressing her appreciation for both her husband and her church, as her husband looks on. Wilson and wife Mopper (left). Mopper, pastor of Bible Baptist church, Wichita, is a Wichita Tabernacle "son."

WICHITA, Kan.—Wichita Baptist Tabernacle celebrated its 25th anniversary with an 8-day homecoming and Bible conference. The Kansas State Baptist Bible Fellowship held its January meeting with the Tabernacle in conjunction with the celebration.

Art Wilson, the Tabernacle's only pastor, organized the congregation in 1939 with 79 charter members. The active membership today is above 1,000. The church owes much to the support of its missionary families of the Baptist Bible Fellowship. Some 40 ministers of the Gospel have gone out from the church.

A highlight of the celebration was the presentation to Dr. Wilson of a check for his expenses on a trip to the Holy Land. The money was raised by the conference and fellowship meeting. The check was presented to the pastor by David A. Carlin, the first minister to go out from the Tabernacle, a former president of the Baptist Bible Fellowship, and now the pastor of Calvary church, Fort Worth, Texas. Dr. Wilson left immediately on his trip.

28 Preachers

THIRTY-EIGHT preachers who have gone out from the Tabernacle returned for the celebration. On New Year's Eve, a watchnight service was attended by approximately 800. The service began at 1:30 and lasted to midnight.

In addition to his work as pastor, Dr. Wilson has held revival meetings in all sections of the United States. He served as president of the Baptist Bible Fellowship for three years. He and his family live at 607 Armstrong.

David A. Carlin, an already noted as the first minister of the Gospel to go out from the Tabernacle. He returned for the ministry during the first year of the Tabernacle's history. During Dr. Carlin's 25th years in the ministry, he has served two pastors: Bible Baptist church in Reno, Okla., and the Calvary church in Fort Worth.

Other ministers who have gone out from Tabernacle church are:



SURPRISE GIFT.

David A. Carlin (right), pastor Calvary Baptist church, Fort Worth, Tex., and the first minister to be ordained from the Wichita Baptist Tabernacle, is handed the Tabernacle's pastor, Art Wilson, a check for a trip to the Holy Land. Dr. Wilson lost no time getting his tickets and getting into the air.

C. E. Balmum, pastor Wichita Heights Baptist Mission, Wichita; Leslie Bales, working with W. A. Wambach, Bible Baptist church, Dodge City; Ronald W. Ballard, pastor Faith Baptist church, Olathe; Clyde Billingsley Jr., pastor Temple Baptist church, Wichita; Clyde Billingsley Jr., pastor Wilhamson Road Baptist church, Macon, Ga.; Dwight Billingsley, pastor Temple Baptist church, Macon, Ga.; Clifford K. Clark, pastor Tulsa Temple, Tulsa, Okla.; Gregory Dixon, pastor Indianapolis Baptist Temple, Indianapolis, Ind.; W. A. Frenking, pastor Fellowship Baptist church, Burger, Tex.; Maurice H. Hutter, pastor Mineral Bible Baptist church, West Mineral; Doris A. Hopper, pastor First Bible Baptist church, Wichita; Harold C. Jones, pastor Grace Baptist church, Tulsa; Fred Lantz, pastor

Likes Our Missionaries



SP/4 JOHN C. H. LAUGHLIN made a visit to The Tribune office the other day. He had been in Taiwan, where he had many friends with William Logan and his family. Mr. Laughlin had visited his parents in Ashboro, N.C., and was on his way to Fort Lewis, Wash. He is with the Army Security Agency.

Mr. Laughlin said that he and many of his Army comrades had come to have great respect for the Fellowship's missionaries. He said that he had met a reserve Army officer on an airplane. When the officer found out that I had been on Taiwan, said Mr. Laughlin, "and I found out that this officer had been in Japan, the officer asked me if I liked Japan. I told him that I had found it very interesting, and because of the Baptist Bible Fellowship's missionaries there, and especially the William Logan whom I had come to know so well."

Mr. Laughlin told the Army officer that he had a similar experience in Japan. "He said most of the fellows talked about Japan," said Mr. Laughlin, "but he told me he got acquainted with the missionaries and they were a blessing to him."

BUILT A CHURCH

Mr. Laughlin said he and some of his comrades, together with missionaries, had some interesting experiences in Taiwan. He said that Rev. Dr. James Dixon, a Presbyterian missionary in Formosa for 37 years, took a group of missionaries back into the mountains to visit a tribe of aborigines. There were 8 or 9 G.I.s in the group, and they went on two different Sundays. On one Sunday there was a dedication service of a new stone church. It cost 300 U.S. dollars to build, but enough concrete and cement to build the foundation. The aborigines did the rest of the work. The soldiers were so impressed with the industry and zeal of the people that they raised enough money to build the church. Mr. Laughlin is a mem-



WICHITA, KAN. Preachers and their wives who attended the 35th anniversary of the Baptist Tabernacle. There were many others who were not present when the picture was made. (A story and other pictures will be found on page 6.)

ber of Oakwood Park Baptist church, Winston-Salem, N.C., and his father, the Rev. C. F. Logan, was pastor until he retired. When Mr. Laughlin's mother, a widow, died, Mr. Laughlin said that since his father was a minister, he had always worried him to take over the church. He said that his father was a minister, but he wanted to be sure the church was in good hands. He said that he would be glad to give God a chance to win to him without the father's aid.

That he says that he has been deeply impressed and moved by what he saw in Taiwan. "One thing that struck me most while I was there," he said, "was the acceptance by the Americans of the American people in the military as Christians. They need Christianity more than the Aborigines. They seemed completely indifferent to the church."

Mr. Laughlin has his application in at Wake Forest College, Winston-Salem, N.C. He will know in the next month or two whether he will be accepted for next September. If he, he will take the pre-ministerial course.

WISDOM is not one among us in whom a devil does not dwell; at some time, in some point, that devil masters each of us; he who has never fallen has not been tempted."

—THEODORE ROOSEVELT.

Letters to The Tribune

Please give names and address with letter. We will withhold both when requested.

LET'S GET IT STRAIGHT

Wichita, Kan. — I was writing to you about the Baptist church of Puerto Rico. By reading your paper, I had some errors in my mind. The church of Rev. Bob Calonge is in Puerto Rico.

Dec. 15, 1963, was the head of "Puerto Rico." The church is in Puerto Rico, which is in Puerto Rico. I am from San Juan.

The air base is Ramsey instead of Boney.

Dec. 27, 1963, it states that Rev. Bob Calonge is the pastor of the Baptist church. This is wrong. He is a missionary in Puerto Rico, and the Baptist church does not support him as pastor. At present, he is the missionary in charge. The church is unable to support a full-time pastor. Rev. Bob only spends approximately three days a week here. He also has two other missions in the mountains and at Arecibo.

Just a little to let you know what has taken place up to date.

After Bro. Jewell Smith completed the raising of the loan of the mission, together to complete the setting up of the college and mission center built at Boney, and to transfer the property to the Fellowship. The transfer is almost complete now. Setting up of the board of the college is well on its way to completion in accordance

with Puerto Rico law. Rev. Bob Calonge will become dean of the college and the trustees of the college will become trustees of the college, with Mrs. Bob Calonge as the regular and secretary and Mr. Wayne Hitchcock as the treasurer.

At this time, we have approximately 27 students that will enroll by the first of January. The college will be known as the College.

JACK P. GARMON, Chairman, Bureau of Solid Baptist Church.

THE TRIBUNE
Twin Falls, Idaho — For many years now, I have rejoiced in the ministry of The Tribune. I want you to know it has been a source of genuine encouragement and inspiration. The enclosed list of subscriptions is a token of the gratitude I feel for The Tribune.

CHESTER WHITEKIR.

Detroit, Mich. — I guess I had better get my pen out. As I saw that your subscription is about to expire, I didn't want to miss a single issue. It seems that every issue has a story, and especially the editorial. I read it every day at one o'clock, but usually read the editorial last.

How rich the Kennedy family had read the editorial on the President's death. It was beautiful.

MRS. A. E. McALISTER.

PAGE 6 SATURDAY MORNING THIRSDAY, JANUARY 31, 1944

2 College Students Tops



MRS. DONNA LYONS



RICHARD TODD

By NAOMI WHITEKER

Mrs. Donna Lyons and Richard Todd, college students, each won a \$25 cash award as the top sales clerk of Sears Department Store in Springfield.

The Lyons works in the basement in the home and yard department, and Mr. Todd works in the men's department.

Mr. Todd was the only person who sold the largest item, a suit, for \$10. This was the first time he had sold a suit for \$10. The first was last October.

Mr. Lyons, from Temple Baptist Church, Springfield, Mo., was the only graduate of the college in the fall of 1942. At Christmas of the same year, she was married to Richard Todd, a Springfield native.

Mr. Todd, from Temple Baptist Church, Springfield, Mo., was the only graduate of the college in the fall of 1942. At Christmas of the same year, he was married to Donna Lyons, a Springfield native.

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VOLUME 100
OF THE
1944

house and pastoring the Bible Baptist church in Eron, Missouri. He and his wife are making plans to go to South America as missionaries upon completion of her third year in May.

Mr. and Mrs. Todd have a son, Ricky, 10 months old.

MISSIONARY ORDAINED AT BONHAM, TEX.

BONHAM, Tex. — William Noel, a graduate of Temple Bible College, Springfield, Mo., recently ordained by the Western Committee of the Baptist Bible Fellowship at

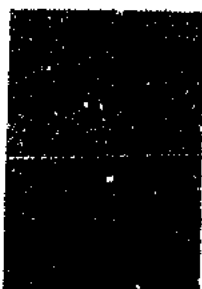
his home in Japan, was ordained to the ministry by Central Baptist church. His ordination was requested by Central Baptist church, Louisville, where Noel has been the associate of the pastor, Ralph Little, for the past 1 1/2 years.

The ceremony was witnessed by Wayne Holaday, pastor South Side Baptist church, Jackson, Missouri; W. R. Fisher, pastor Harmony Baptist church, Independence, Missouri; F. C. Lester, missionary to Klamath Falls, Oregon; and several other ministers. The ceremony was held at the home of Mrs. Noel, 1000 N. 10th St., Bonham, Texas.

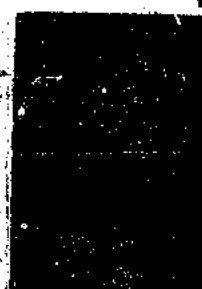
Gene to South America



A. E. DONNELLSON



A. E. VICK



W. H. ZIMMERMAN

A. E. DONNELLSON, chairman of the Western Committee of the Baptist Bible Fellowship, and A. E. VICK, pastor of the Temple Baptist church, Springfield, Mo., are making plans to go to South America as missionaries upon completion of their third year in May.

Mr. and Mrs. Vick have a son, Ricky, 10 months old. Mr. and Mrs. Zimmerman have a son, Ricky, 10 months old. Mr. and Mrs. Zimmerman have a son, Ricky, 10 months old.

COMMUNISM IS TREASON!



FIGHT IT WITH . . .

Common Sense

AMERICA'S NEWSPAPER AGAINST COMMUNISM

Copyright Registered 1937 United States Patent Office

Issue No. 348 (15th Year)

Union, New Jersey, U.S.A.

Nov. 1, 1960

Printed at THE COMMON SENSE, N.J.

FIVE CENTS

"The truth, the whole truth,
and nothing but the truth"Edward J. Rouse
Editor

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How Red Is NAACP & Its Leaders?

The NAACP, supposedly a Negro organization, is controlled by a little Marxist Jew who does not have the welfare of the Negro at heart. They use the Negro to create strife and disorder. The oldest trick in the book—DIVIDE AND CONQUER!

Some people in Northern States are under the impression that Negro people want to abolish segregation and that it is the colored people who are pushing for integration.

After interviewing people of both the Black and White races in 20 States we can truthfully say that approximately 90% of the colored people throughout the South WANT separate schools for their children. Why shouldn't they? Most people like to be with their own kind. We saw Negro schools which appeared empty, and in many cases the Negro people were better than those for white.

The two races have been living in harmony in the South for a long time, and they understand each other. Clever Jewish Communist organizers from New York area

have been agitating years. Negroes in the South, using false promises just as they did with the Hungarians in Europe to come their support in communist Hungary. Later when Jewish Communists had gained full control of Hungary, the workers asked for recognition and were mercilessly slaughtered. We now state that the National Association for the Advancement of Colored People is positively a Communist dominated, agitating group which has never had a Negro as head of the organization since it was founded and financed by the Communist Gerhard Fund. A Jew has always headed the National Association for the Advancement of Colored People (A more appropriate name for the NAACP).

The NAACP derives its real power from the Anti-Defamation League of B'nai B'rith which is the Jewish F.B.I. Twenty-four years ago the Jewish Marxist conspiracy enables us to state that the United States is in the process of being brain-washed and slowly but surely being prepared to give up its freedom.

Since the Supreme Court decision on

segregation has focused attention on NAACP, and they have been exposed and again as a Communist front, important public meetings in several states that they have been careful to get out all Communist influences. Tell all the important officers of NAACP, the kind of have been the NAACP for years. When the Communists go on the spot or in court they can suddenly take the form of a Jew or "don't remember" or like the Jew who in an effort to deceive the public, the Whittaker Chambers for calling him Communist. Many of these Jews are conscious evidence that form. Ben-Herbert Lehman (Socialist) is a Jew and certainly has the most powerful mind behind the NAACP!

The Zionist controlled NAACP is brainwashing Negroes to force into the South as an opening wedge to end segregation. The Authorities are down segregation. The Authorities are down segregation. The Authorities are down segregation.

—O— Please turn to page 473



Roy Wilkins
Executive Secretary NAACP
B Communist - front chairman.



Dr. Ralph Bunche
Deputy Sec. Gen. of U.N.
has 2 Red front Chairmen
National director of NAACP.



Thurgood Marshall
Special Council NAACP, has
3 Communist - front chairmen.



Channing Tolles
Asst. Treasurer of NAACP,
at least 50 Communist-front
chairmen.

JOHN H. HARRIS
GEORGE L. HARRIS SOCIETY

Common Sense

Common Sense

The fight is with common sense!

3

FORCE THE NEGRO TO MIX - NAACP'S GOAL

INTEGRATION IN SCHOOLS - RESULT INTERMARRIAGE

In considering the problem of race prejudice, it must be approached from the standpoint of the greatest good both to Negro and White. Intermixing of the races cannot properly enter into the picture of integration.

The only logical method to determine the best situation is to depend on well substantiated facts as to results when solutions have been in effect long enough to have produced a definite pattern.

From indisputable, irrefragable, irrefutable facts, the NAACP's goal, it is a matter of fact by the NAACP's own admission, is to force the Negro to mix with the White race.

The Negro should be proud of his own heritage and NOT let the Jewish controlled NAACP force him into seeking the intermarriage of the races.

If our Creator intended only one race, a white race, he would have so created it in the beginning and NOT expected the NAACP to finish his work for him. Our Lord gave each race its own character, individuality and charm. It is obvious to anybody that they should remain as the Jewish organizations and the NAACP intend to change the wishes of our Creator.

If the Communist policy of conquest by absorption can be followed through racial identity and the inevitable intermarriage of Whites and Negroes, then this evil Marxist philosophy will prove the downfall, it is the actual disappearance of the entire White Race.

The North, like the South is not without its share of the segregation problem in its schools as well as its public housing projects.

In the latter part of 1957, deep in Brooklyn's midtown-city center area, which has a predominantly Negro population, public school 248 incurred the wrath of the Jewish controlled NAACP.

P.S. 248, a new junior high school with 1,000 Negro students and less than 5 or 6 white students was not integrated enough to suit the NAACP.

The white families, trying to protect their children and moved out of the neighborhood as fast as the Negro families had moved in, thus making the Bedford-



Here we have race-mixing at the Constantine School, Montclair, Tenn.

Handing at school would be encouraged by white teachers and the children would not be capable of coping with the overwhelming Red propaganda aimed at them. This is the inevitable result of integration. The young child in school can come under the influence of the increasing crop

of one-world minded teachers. Little's story was to capture the young minds of the children at school, indoctrinate them, and parents would lose them forever.

This is the same type of philosophy the Jewish controlled NAACP tries to use. The mixing of a Negro child with a White child is just the opening wedge!

LONGHORNMAN - REAR-END

- TAXIDRIVER -



Adam Clayton Powell, U.S. Congressman from New York, speaking on the Wills Walling (2) television program. Chaired 11 at 11 P.M. Friday, March 29, 1958 made several significant statements.

Powell stated that in New York City 40% of the school population are Negroes and Puerto Ricans; 60% of the city population is Negro and Puerto Ricans; that in the U.S. 25 million whites have Negro blood and 20% of the Negroes have white blood. When asked by Mike Wallace what he thought was the best way to solve the race problem, Powell quoted an educator at Harvard University as stating that "intermarriage would solve the race problem."

- KEEP INFORMED -

Negroes will not permit us giving in to a full understanding of the terrifying danger of the race mixing plot presented by cunning Marxist minds who are using tele-vision politicians to enforce it.

Ask your friends to subscribe to COMMON SENSE at the low subscription price of \$1.00 per year by the way be informed. Only an aroused public can prevent our being slaves under Jewish domination as stated in 42 countries. In 42 years more than 50% of the American population has been indoctrinated.

- JEWS STIR UP NEGROES -



Rev. Martin Luther King, Jr., delegate from the Southern U. N. photographed while speaking at the Negroes March, 1, 1958 in Montgomery, Alabama. Although a citizen of a Southern country, this Jew is traveling over our Southern States being allowed and even invited to our offices. As the PHOTO shows, Jews will turn slaves and race mixing with other as the Jewish race will dominate the Jew in 1977, 1978, 1979, 1980, 1981, 1982, 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 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The common sense of the hour

Common Sense

The fight of the common sense

HOW RED IS THE NAACP?

—Continued from page 1—

was an outstanding example of this type agitation, the same tactics were used in Little Rock. Anyone who has studied the NAACP and its questionable leaders should be able to see right through their evil schemes.

The masterminds in New York are directing this attack on segregation, fully realizing that it is going to bring trouble between White and Black — that is the reason they work so feverishly. Few people realize that this is only part of the plan to further weaken and condition our country for Communism!

A great part of the world in which half the population of the world exists, has already been broken down and Marxist rule set up. All kinds of deception were employed to bring this about, camouflaged with high-sounding purposes.

The Jews of the South may join the Citizens' Councils, but such and every Jewish organization and publication in the U.S. are wholeheartedly backing the fight to integrate the races through integration. If Marxist pressure were withdrawn from the race-mixing movement, it would be a sudden death!

Careful research has been done on Marxist leaders within the NAACP and key government positions. With this information, the subject of integration will be approached with a better understanding of exactly who controls the NAACP and the Supreme Court of the United States!

The NAACP was a member of American Youth For A Free World, which was organized in 1942 and, in 1945, was described by the California In-American Activities Committee as "heavily infiltrated and effectively dominated by the Communist Party." The House Un-American Activities Committee in its 1951 Guide to Subversive Organizations and Publications described the American Youth For A Free World as "a communist clearing house."

THE "COMMITTEE OF 100"

The reader will get a more accurate understanding of the background of the NAACP from the behindhand of the "Committee of 100" which is "an expert of the NAACP Legal Defense and Educational Fund, Inc." located at 16 Columbus Circle, N.Y., New York. The behindhand consists of 97 sponsors, 85 of whom have a total of 661 Red-front relations by the Dept. of Justice and the Un-American Activities Committee.

ANNA ROSENBERG VISITS U. S. TROOPS



Anna Rosenberg (2), while Asst. Sec. of Defense in charge of all troop campers, supervised the hiring of more than a million employees of 113 government agencies. She packed the Defense Dept. with U.S. and communists during the Korean administration. When the late Sen. McCarthy began digging into the Defense Dept., and demanded to know who promoted

Freem, the code and there's a record for McCarthy's work.

It was Anna Rosenberg's influence that caused the removal of troops from Germany and the placing of thousands of Negro troops in Germany where they had close association with the girls, known as "Koreans" who sold the U.S. to adopt 3,000 Negro babies from Germany.

Red's Racial Record

William Z. Foster, present head of the Communist Party in America, declared in his book entitled:

"TOWARDS SOVIET AMERICA"

"The American Soviet will of course abolish all restrictions upon racial marriage. The revolution will only hasten this process of integration, already proceeding throughout the world with increasing tempo." (Page 331-332)

David Lawrence reported in his newspaper column (Times-Picayune, Nov. 12 1952) that Prof. Allen Nevins, long time professor of American history at Columbia University, two time Pulitzer prize winner...

"is emphatically in favor of desegregation and calls upon the Southern people to face reality, as he tells them that intermarriage between the races in the coming years is inevitable."

Today, the Kremlin leadership in Moscow feels so firmly entrenched in the NAACP that the top official organ of the Communist Party in the U.S. has called for its followers that:

"We must support the NAACP in this struggle with every ounce of energy at our disposal."

(Political Affairs, official organ of the Communist Party, U.S.A. Feb. 1952, p. 21).

— Famous Quotation —

Senator Theodore G. Bilbo

"If our buildings, our highways, our railroads should be wrecked, we could rebuild them. If our cities should be destroyed, out of the very ruins we could erect newer and greater ones. Even if our armed might should be crushed, we could rear sons who would redeem our power. But if the blood of our white race should become corrupted and mingled with the blood of Africa, then the present greatness of the United States of America would be destroyed and all hope for the future would be forever gone. The maintenance of American civilization would be as impossible for a negroed America as would be redemption and restoration of the white man's blood which had been mixed with that of the negro."

All Jewish Groups Urged to Consult On Integration

BOSTON (UPI) — The view that consultation between all the Jewish agencies and the Jews of all parts of the U.S. on problems involved in the school integration fight was expressed by several speakers at the 17th plenary session here of the National Community Relations Advisory Council. The NCRAC is the over-all Jewish agency involved in community relations work.

David L. Ullman, was re-elected chairman of the group.

An exact reproduction from the National Jewish Post of June 30, 1955.

AID INTEGRATION RABBIS ARE ADVISED

Excerpts from Miami Herald of May 1, 1955.

The attitude of the rabbis both in the South and North must be "clear and definite" concerning integration, Rabbi Paul Reich of Norfolk, Va., declared. He said "there must be no pussyfooting."

READ AND BE INFORMED

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Mr. PEREZ. I doubt if I could suggest, but I believe that if the committee, if Congress would have the benefit of the information which the FBI Director, J. Edgar Hoover, has on these various characteristics who are leading these mass action demonstrations and boycotts, it would be most revealing, and possibly might affect the good judgment of the Members of Congress against that type of legislation, which would help that cause.

Mr. CHAIRMAN. I also would like to file this photostat from the book "Whither Solid South?" which I read.

The CHAIRMAN. It will be admitted.

Mr. PEREZ. Mark the exhibit "Perez 8."

(The document referred to was marked "Perez Louisiana Exhibit No. 6" and is as follows:)

EXHIBIT 6, PEREZ, LOUISIANA

WHITHER SOLID SOUTH?

A Study in Politics and Race Relations

(By Charles Wallace Collins, of the Alabama bar)

CIVIL WAR AND RECONSTRUCTION

The North, New England, in particular, even while she had slavers who were still ravaging the coast and jungles of Africa,¹ began to agitate for abolition of slavery in the South. In those very cities which had been built to prosperity through 200 years of highly profitable slave trade men and women preached with fanatical fervor against the alleged moral depravity of the southern slave owner. The question of the abolition of slavery finally reached the stage where a peaceful settlement became impossible. The issue was put to the sword and the South lost. It set the South back more than a generation and shook the whole country to its core. The slaves were liberated. The South became conquered and occupied territory.

In the midst of the Civil War, President Lincoln had begun to revive the State governments in the South. His proclamation of December 8, 1863, offered amnesty to those persons who would take an oath of loyalty for the future and agree to abide by the President's proclamations and the acts of the Congress relating to the slaves. From this offer he excluded the southern leaders of the Confederacy. The proclamation also provided that if a number of persons not less than one-tenth of the voters in 1860 took the oath, being qualified voters under the laws of the State in 1860, they would be recognized as having established a State government, republican in form. Before his death, Lincoln had already recognized the governments of Virginia, Tennessee, Louisiana and Arkansas.

The radical Republicans, who controlled both Houses of the Congress, were greatly incensed at this proclamation as being beyond the powers of the President and as being a usurpation of the powers of the Congress to provide for the reconstruction of the South. A bill was hastily put through the Congress which provided that there would be no reconstruction of any State until a majority of the white male citizens should take an oath to support the Constitution of the United States. This bill suffered a pocket veto by President Lincoln.

Johnson, upon becoming President, adopted the reconstruction policy of Lincoln with some additions of greater severity. His proclamation of amnesty was issued on May 29, 1865. It embraced the principles of Lincoln's but excluded all persons who had voluntarily fought against the Union and who owned more than \$20,000 worth of property. Congress had adjourned on March 4 and would not reconvene until December. This gave Johnson time to put his plan into effect without interference. Before the Congress met in December, all of the former Confederate States had complied with the proclamation (except Texas, which

¹ See list of slavers in operation from 1808 to 1861. DuRoi, app. C, "Typical Cases of Vessels Engaged in the American Slave Trade," p. 289 ff. In August 1860, Nathaniel Gordon of Portland, Maine, was arrested off the coast of Africa on board his ship, the *Erie*, with 880 Negroes—172 men, 106 women, and 612 boys and girls. He was convicted of piracy on Nov. 8, 1861, during the Civil War, and later hanged. (Spears, 218 ff.)

delayed until the spring of 1866), by adopting constitutions and setting up governments.

The 13th amendment for the abolition of slavery had been submitted to the States early in 1865 before the Congress adjourned. It was now ratified by all of the former seceding States, except Mississippi, and was proclaimed on December 18, 1865.

Upon returning to Washington in December, the Congress refused to recognize the President's reconstruction plan and asserted its right of jurisdiction. It passed a civil rights bill over Johnson's veto on April 9, 1866.

THE 14TH AMENDMENT

On June 16, 1866, the 14th amendment was submitted to the States. Section 1 provided for equality before the law and the protection of due process of law and declared all persons born or naturalized in the United States to be citizens thereof. Section 2 reduced the representation in the Congress of any State which denied to Negroes the right to vote on the basis of manhood suffrage. Section 3 disfranchised all of the leaders of every description of the Confederacy. Section 4 invalidated all State debts incurred in aid of the Confederacy. Section 5 gave the Congress the power "by appropriate legislation" of enforcement.

Every southern State except Tennessee promptly rejected this amendment. Upon the theory that no State can secede from the Union, the former Confederate States had to be taken into account in arriving at the three-fourths of the States' vote in order to secure ratification. In the face of this situation, the radicals in control of the Congress decided to resort to brute force to secure the adoption of this amendment in the South. Under the Reconstruction Act of March 2, 1867, the southern States were put under military rule, except Tennessee. The South was divided into five military districts, each such district being under the command of a general of the Army. The general had authority to call a constitutional convention in each State under his jurisdiction to which delegates might be elected by the votes of all adult males of whatever race or color who had 1 year's residence and who had not been disfranchised for rebellion against the United States.

The act further provided that whenever any State shall have at such a convention framed a new constitution providing for Negro suffrage and disfranchisement of former Confederates, the constitution was to be submitted to the Congress for approval. If the Congress approved and if the State then ratified the 14th amendment and that amendment duly became a part of the Federal Constitution, then such a State would be entitled to be represented in the Congress by Senators and Representatives who had to take the oath that they had not fought in the Confederate service nor held office under or given support to any government which had been hostile to the United States.

Elections were held in the southern States under this procedure. The district Army commanders were required to be present at the registration of voters and to administer an oath which disqualified the white people of property, education and refinement. Under this procedure, the 14th amendment was ratified and proclaimed July 28, 1868. At the beginning of 1870, all former Confederate States had been readmitted into the Union and Negro rule was on its way.

The 15th amendment was ratified under the same circumstances as the 14th, the Negro thus being assured that he could not be denied the right to vote solely because he was a Negro.

CARPETBAGGER AND SCALAWAG

The whole 8 years of Grant's administration which followed was a tragic nightmare to the land south of the Mason-Dixon line. Four years of Civil War had left the South broken, poverty stricken and devastated. Restoration of normal life would have been difficult under the most favorable circumstances. But the years of Reconstruction, ranging up through 12 years for some States, was an attempt to destroy white civilization in the South by crude and brutal methods. The former Negro slaves were put into power over their old masters. The Negro knew nothing of the affairs of government, but there were two classes of whites to assist him. The northern predator—the carpetbagger—stalked the stricken South like a jackal to slich for himself something from the wreckage. His partner was the renegade and apostate southerner—the scalawag—without honor, pride, or patriotism, a political bastard, who deserted his own people in

their hour of peril to become a scavenger, hovering like a vulture above the ruins of Negro rule.

Under the guidance of these lowest specimens of the human race, supported by the Republican Party and the Army of the United States, the South was reconstructed. It emerged from the ordeal financially bankrupt and ruined.²

The Democratic Party in the North had stood solidly against the whole Reconstruction program. Finally, the northern people generally began to be nauseated at the corruption of Grant's administration and at the horror of Negro rule in the South. The tide had begun to turn. Then came the panic of 1873. In that same year, the Supreme Court handed down its opinion in the *Slaughter House* cases³ and in 1876, *U. S. v. Cruikshank*,⁴ the combined effect of which was to overthrow the whole theory of congressional reconstruction. These cases held that Congress enjoyed no enlargement of its powers under the Constitution by the ratification of the 14th amendment; that the police power of the States remained intact; that Congress could not concern itself with the civil rights of individuals and that the amendment was a negative restraint upon the States, any violation of which could be tested only in the courts by the party aggrieved.

RESTORATION OF WHITE RULE

The Southern States gradually returned to white Democratic rule. By 1875 only Louisiana, South Carolina, and Florida remained Republican and were still occupied by Federal troops. In the Hayes-Tilden presidential election of 1876, Hayes was declared elected. The Democrats retained control of the House. Hayes withdrew the last of the Federal troops from the South in 1877, and Republican-Negro domination was replaced by the Democratic party and the Solid South.

An important factor in the revival of white supremacy was the work of the Ku Klux Klan. Disfranchised officers of the Confederate Army and Navy, former State and Federal officials, merchants and planters—in a word, the former ruling class of the South—in utter desperation organized this secret society in an effort to regain control over the State and county governments. They rode at night in hooded regalia to drive out the carpetbagger and to subdue the scalawag by methods which were not ineffective.

Reconstruction of the South thus came to an end. At this time, the price of cotton was high and opportunity was afforded for planter and Negro to seek some sort of readjustment to return to the land. The Negroes had not traveled away from their old neighborhoods. The general pattern of the new plantation way of life began to develop. The Negro returned to work in the cottonfields—working as he did before—but as tenant, on shares, or for wages. The change had been made from the relationship of master and slave to that of employer and employee. For a period of over 60 years there was peace in the South between the white man and the Negro. There had been gradually worked out between them a practical solution of race relations where each understood the other.

SECOND RECONSTRUCTION IN THE OFFING

Today, however, economic and political forces outside of the South are responsible for a new agitation which is becoming reminiscent of that preceding and following the Civil War. The great industrial expansion in the North during the war of 1914-18 created a strong demand for laborers. Negroes began to migrate northward to take these jobs. They streamed into large cities like New York, Chicago, Philadelphia, Cleveland, Detroit, and Pittsburgh, and settled in the Negro districts there. After the war, they did not return south, but on the contrary, the lines of migration were kept open to the north. When the depres-

² See James Ford Rhodes, "History of the United States," vols. V, VI, and VII; James G. Blaine, "Twenty Years of Congress," vol. II, 1886; William A. Dunning, "Reconstruction—Political and Economic"; W. L. Fleming, "Documentary History of Reconstruction"; "Civil War and Reconstruction in Alabama" (1905); "The Sequel of Appomattox" (1919); J. W. Garner, "Reconstruction in Mississippi" (1902); E. C. Woolley, "Reconstruction in Georgia" (1901); J. S. Reynolds, "Reconstruction in South Carolina" (1905); J. G. de R. Hamilton, "Reconstruction in North Carolina" (1913); John R. Neal, "Disunion and Reconstruction in Tennessee" (1898); James W. Fertig, "Secession and Reconstruction of Tennessee" (1898); T. S. Staples, "Reconstruction in Arkansas, 1862-74" (1928); E. Lonn, "Reconstruction in Louisiana After 1868" (1918); C. W. Ramsdell, "Reconstruction in Texas" (1910).

³ 16 Wall. 86.

⁴ 92 U.S. 542.

sion came, they lost jobs by the thousands. Under the New Deal, they went on relief and were supported out of the Public Treasury. This gave them economic security. When they came north, they became qualified voters. The relationship between the relief roll and the list of registered voters revealed itself. During and after the Second World War this northward migration increased and with particular force to the Pacific coast which made fundamental changes in the population of California.

From the close of the Civil War to 1936, those Negroes in the North who could vote always chose the Republican ticket. That was taken for granted. But through a series of political manipulations, the Negroes in the campaign of 1936 went over to the Democratic Party in a bloc, and there they have remained. The white South and the northern Negroes have voted in the national elections on the same side since then.

Negro political leaders in the North assert that the Negro holds the balance of power in a number of important northern cities. But the question of political balance of power in a national election is something of a "will o' the wisp" in industrial centers where there are so many other minority groups. The ballot being secret, the vote is not subject to statistical treatment. The fact remains, however, that the Negro vote has become a factor of great importance. This is evidenced by the enticements offered by both major parties to capture and hold it.

After going over to the Democratic Party, the Negroes, through their own leaders and through mixed white and Negro organizations, began more clearly and concretely to formulate a program for equality with the whites. It was divided into items for immediate realization and those for long-range accomplishment.

Many southern friends of the Negro were offering support on a program of this sort. But after the publication of Gunnar Myrdal's "An American Dilemma," the announcement of the Four Freedoms and the Atlantic Charter, and after Pearl Harbor, the Negroes threw all their demands into one immediate objective to be achieved as a war measure during the war. This included the complete abolition of segregation in all employment and the right of manhood suffrage. Great progress was made but the war ended before these ends were realized. The program has now become a postwar objective and the most significant political fact today is that the powerful CIO has made the Negro movement an integral part of its own legislative aims and is now actively engaged in organizing the Negroes in the South to this end.

Volume after volume has come from the press since Pearl Harbor on this subject written by Negro intellectuals and their white protagonists. The tempo of race tension is quickening, and a radical program is on the national legislative slate for enactment. It has the endorsement of both major parties. The South finds itself in the anomalous position of being the sole support of a political party which intends to put her through a second Reconstruction.

The approach of those who are advocating these measures for Negro advancement adhere strictly to the Negro population in the United States where only about 10 percent of the Negroes in the world reside. They ignore the existence of the 90 percent. They make no comparative studies of the relations between Negroes and whites in other countries. The long history of the Negro in Africa and his contact with white people throughout the centuries provide valuable information which bears on the Negro question in America.

The Gunnar Myrdal report contains this ominous prophecy: "We have become convinced in the course of this inquiry that the North is getting prepared for a fundamental redefinition of the Negro's status in America. The North will accept it if the change is pushed by courageous leadership. And the North has much more power than the South. The white South is itself a minority and a national problem. * * * At this juncture the white North is moving in a direction contrary to the South. The white South is becoming increasingly isolated. There has not been such a great distance in the views of the Negro problem between the white majority groups in the two regions since Reconstruction. Though it is seldom expressed clearly, the outside observer feels convinced that an increasing number of white northerners mean business this time. * * * The North cannot well afford any longer to let the white Southerners have their own way with the Negroes as completely as they have had."¹

Roy Wilkins, assistant secretary of the National Association for the Advancement of Colored People, speaking at the 33d Annual Convention of the NAACP

¹ Gunnar Myrdal, "An American Dilemma," vol. 2, pp. 1010, 1014.

in Los Angeles, said: "The issues are clear; the stakes are great; the path is straight; the tensions are tremendous; the pressure is crushing. This is our answer to the Ethridges of Kentucky, the Dabneys of Virginia, the Graves of Alabama. This is the watchword that must go forward. We cannot give up the trust."

On January 23, 1946, Harold E. Stassen, in an address in favor of the FEPC bill, said: "The issue is intense, it is emotional, it is deep. But let us recognize that the stakes are very high. It is part of the very atmosphere which will determine the continuing peace and happiness of mankind."

The South is at the crossroads. She is faced with a great constitutional question. If she does not make a decision in her own protection, the decision which will govern her will be made by her enemies. However, the South is not defenseless and she has weapons in reserve more forceful than the temporary expedient of a Senate filibuster. If she cannot obtain relief in a new two-party alignment, she can, if driven into political isolation, exert in the electoral college a degree of power which will draw recognition and respect from both of the old parties.

The Negro question in America is of the utmost importance and is a factor of increasing disturbance and irritation to both white and black. As the Negro rises in the social scale he is met by bars of increasing height in the North as well as in the South. He is not wanted as an associate at the top levels of society anywhere. The higher his education, the more refined his tastes; and the greater his ambitions, the more bitterly he feels the "cultural hell" in which he lives. Biological amalgamation might as well be dismissed as a solution, at least so far as the South is concerned. Migration to a new 49th state in Africa under Federal sponsorship is a rational possibility.

Mr. PEREZ. I also have a photostat from the pertinent pages of the decision of *Herndon v. Lowry* which I would like to offer as an exhibit.

The CHAIRMAN. It will be copied into the record.

(The document referred to was marked "Perez Louisiana Exhibit No. 7" and is as follows:)

EXHIBIT 7

801 U.S. 242

HERNDON v. LOWRY, Sheriff

Nos. 474, 475

Argued February 8, 1937

Decided April 26, 1937

1. Courts \S 391 (3)

The scope of a habeas corpus proceeding brought in a state court by one convicted in the courts of such state is a state and not a federal question, and where the state court treated the proceeding as properly raising issues of federal constitutional rights, United States Supreme Court has jurisdiction and such issues are open there.

2. Constitutional law \S 274

The power of a state to abridge freedom of speech and of assembly is the exception rather than the rule, and the penalizing even of utterances of a defined character must find its justification in a measurable apprehension of danger to organized government (Const. Amend. 14).

3. Constitutional law \S 274

If state statute penalizes innocent participation in a meeting held with an innocent purpose, merely because the meeting was held under the auspices of an organization, membership in which, or the advocacy of whose principles is also denounced as criminal, the law so construed and applied goes beyond the power to restrict abuses of freedom of speech and arbitrarily denies that freedom (Const. Amend. 14).

* Quoted in "The Fighting South," John Temple Graves, G. P. Putnam's Sons, New York, 1948, p. 183.

* Washington Post, Jan. 24, 1946.

4. Constitutional law § 274

Where a state statute is so vague and uncertain as to make criminal an utterance, or an act which may be innocently said or done, with no intent to induce, resort to violence, or on the other hand may be said or done with a purpose violently to subvert government, a conviction under such a law cannot be sustained (Const. Amend. 14).

5. Constitutional Law § 274

Georgia statute defining offense of attempt to incite insurrection, construed to apply to one soliciting members for a political party, and conducting meetings of a local unit of that party, when one of the doctrines of such party established by reference to a document might be said to be the ultimate resort to violence at some indefinite future time against organized government, in the absence of any evidence that he exhibited such document to any one, that he brought the unlawful aims of the parties to the notice of others, that he approves them, or that the program was conceived of by any one as more than an ultimate ideal held an unwarranted invasion of the right of freedom of speech (Code Ga. 1933, §§ 26-901 to 26-904; Const. Amend. 14).

6. Constitutional law § 274

Georgia statute defining attempt to incite insurrection as attempt by persuasion or otherwise to induce others to join in any combined resistance to lawful authority of the state, construed as violated if the offender intended that the insurrection should happen at any time within which he might reasonably expect his influence to continue to be directly operative in causing such action by those whom he sought to induce, held so vague and indeterminate respecting the standard of guilt prescribed as to violate the freedom of speech and assembly amended by the Fourteenth Amendment (Code Ga. 1933 §§ 26-901 to 26-904; Const. Amend. 14).

Mr. Justices VAN DEVANTER, MOREYNOLDS, SUTHERLAND and BUTLER, dissenting.

Appeals from the Supreme Court of the State of Georgia.

Habeas corpus by Angelo Herndon against J. Lowry, Sheriff of Fulton county, Ga. An order discharging the petitioner was reversed by the Supreme Court of Georgia (182 Ga. 582, 186 S.E. 429) and the petitioner appeals.

Reversed and remanded.

[243] Mr. Whitney North Seymour, of New York City, for appellant.

Mr. J. Walter Le Crow, of Atlanta, Ga., for appellee.

Mr. Justice ROBERTS delivered the opinion of the Court.

The appellant claims his conviction in a state court deprived him of his liberty contrary to the guarantees of the Fourteenth Amendment. He assigns as error the action of the Supreme Court of Georgia in overruling his claim and refusing him a discharge upon habeas corpus. The petition for the writ, presented to the superior court of Fulton county, asserted the appellant was unlawfully detained by the appellee as sheriff under the supposed authority of a judgment pronouncing him guilty of attempting to incite insurrection, as defined in section 58 of the Penal Code (Code 1933, § 26-902), and sentencing him to imprisonment [244] for not less than eighteen nor more than twenty years. Attached were copies of the judgment and the indictment and a statement of the evidence upon which the verdict and judgment were founded. The petition alleged the judgment and sentence were void and appellant's detention illegal because the statute under which he was convicted denies and illegally restrains his freedom of speech and of assembly and is too vague and indefinite to provide a sufficiently ascertainable standard of guilt, and further alleged that there had been no adjudication by any court of the constitutional validity of the statute as applied to appellant's conduct. A writ issued. The appellee answered, demurred specially to, and moved to strike, so much of the petition as incorporated the evidence taken at the trial. At the hearing the statement of the evidence was identified and was conceded by the appellee to be full and accurate. The court denied the motion to strike, overruled the special demurrer and an objection to the admission of the trial record, decided that the statute, as construed and applied in the trial of the appellant, did not infringe his liberty of speech and of assembly, but ran afoul of the Fourteenth Amendment because too vague and indefinite to provide a sufficiently ascertainable standard of guilt, and ordered the prisoner's discharge from custody. The appellee took the case to the Supreme Court of Georgia, assigning as error the ruling upon his demurrer, motion, and objection, and the decision

against the validity of the statute. The appellant, in accordance with the state practice, also appealed, assigning as error the decision with respect to his right of free speech and of assembly. The two appeals were separately docketed, but considered in a single opinion which reversed the judgment on the appellee's appeal and affirmed on that of the appellant¹ concluding: "Under [245] the pleadings and the evidence, which embraced the record on the trial that resulted in the conviction, the court erred, in the habeas corpus proceeding, in refusing to remand the prisoner to the custody of the officers."

The Federal questions presented and the manner in which they arise appear from the record of appellant's trial and conviction embodied in the petition, and from the opinions of the state Supreme Court in the criminal proceeding.

At the July term, 1932, of the superior court of Fulton county an indictment was returned charging against the appellant an attempt to induce others to join in combined resistance to the lawful authority of the state with intent to deny, to defeat, and to overthrow such authority by open force, violent means, and unlawful acts; alleging that insurrection was intended to be manifested and accomplished by unlawful and violent acts. The indictment specified that the attempt was made by calling and attending public assemblies and by making speeches for the purpose of organizing and establishing groups and combinations of white and colored persons under the name of the Communist Party of Atlanta for the purpose of uniting, combining, and conspiring to incite riots and to embarrass and impede the orderly processes of the courts and offering combined resistance to, and, by force and violence, overthrowing and defeating the authority of the state; that by speech and persuasion, the appellant solicited and attempted to solicit persons to join, confederate with, and become members of the Communist Party and the Young Communist League and introduced into the state and circulated, aided and assisted in introducing and circulating booklets, papers, and other writings with the same intent and purpose. The charge was founded on § 53 of the Penal Code, one of four related sections. Section 53 defines insurrection, § 54 defines an attempt to incite insurrection, § 57 prescribes the death penalty for conviction of the offenses described in the two preceding sections unless the jury shall recommend mercy, and § 58 penalizes, by imprisonment, the introduction and circulation of printed matter for the purpose of inciting insurrection, riot, conspiracy, etc. The sections are copied in the margin.²

The appellant was brought to trial and convicted. He appealed on the ground that, under the statute as construed by the trial court in its instructions to the jury, there was no evidence to sustain a verdict of guilty. The Supreme Court affirmed the judgment upon a broader and different construction of the Act.³ The appellant moved for a rehearing, contending, *inter alia*, that, as so construed, the statute violated the Fourteenth Amendment. The court refused to pass upon the constitutional questions thus raised, elaborated and explained its construction of the statute in its original opinion, and denied a rehearing.⁴ The appellant perfected an appeal to this court claiming that he had timely raised the federal questions and we, therefore, had jurisdiction to decide them. We held we were without jurisdiction.⁵ Upon his commitment to serve his sentence he sought the writ of *habeas corpus*.

In the present proceeding the Superior Court and Supreme Court of Georgia have considered and disposed of the contentions based upon the Federal Constitution. The scope of a *habeas corpus* proceeding in the circumstances dis-

¹ 132 Ga. 532, 186 S.E. 429, 430.

² "53. Insurrection shall consist in any combined resistance to the lawful authority of the State, with intent to the denial thereof, when the same is manifested or intended to be manifested by acts of violence.

"54. Any attempt, by persuasion or otherwise, to induce others to join in any combined resistance to the lawful authority of the State shall constitute an attempt to incite insurrection.

"57. Any person convicted of the offense of insurrection, or an attempt to incite insurrection, shall be punished with death; or, if the jury recommend to mercy, confinement in the penitentiary for not less than five nor more than 20 years.

"58. If any person shall bring, introduce, print, or circulate, or cause to be introduced, circulated, or printed, or aid or assist, or be in any manner instrumental in bringing, introducing, circulating, or printing within this State any paper, pamphlet, circular, or any writing, for the purpose of inciting insurrection, riot, conspiracy, or resistance against the lawful authority of the State, or against the lives of the inhabitants thereof, or any part of them, he shall be punished by confinement in the penitentiary for not less than five nor longer than 20 years." (Georgia Code, 1933, §§ 26-901 to 26-904, inclusive.)

³ *Herndon v. State*, 178 Ga. 832; 174 S.E. 597.

⁴ *Herndon v. State*, 179 Ga. 597; 176 S.E. 620.

⁵ *Herndon v. Georgia*, 235 U.S. 441.

closed is a state and not a federal question and since the state courts treated the proceeding as properly raising issues of federal constitutional right, we have jurisdiction and all such issues are open here. We must, then, inquire whether the statute as applied in the trial denied appellant rights safeguarded by the Fourteenth Amendment.

The evidence on which the judgment rests consists of appellant's admissions and certain documents found in his possession. The appellant told the state's officers that some time prior to his arrest he joined the Communist Party in Kentucky and later came to Atlanta as a paid organizer for the party, his duties being to call meetings, to educate and disseminate information respecting the party, to distribute literature, to secure members, and to work up an organization of the party in Atlanta; and that he had held or attended three meetings called by him. He made no further admission as to what he did as an organizer, or what he said or did at the meetings. When arrested he carried a box containing documents. After he was arrested he conducted the officers to his room where additional documents and bundles of newspapers and periodicals were found, which he stated were sent him from the headquarters of the Communist Party in New York. He gave the names of persons who were members of the organization in Atlanta, and stated he had only five or six actual members at the time of his apprehension. The stubs of membership books found in the box indicated he had enrolled more members than he stated. There was no evidence that he had distributed any of the material carried on his person and found in his room, or had taken any of it to meetings, save two circulars or appeals respecting county relief which are confessedly innocuous.

The newspapers, pamphlets, periodicals, and other documents found in his room were, so he stated, intended for distribution at his meetings. These the appellee concedes were not introduced in evidence. Certain documents in his possession when he was arrested were placed in evidence. They fall into five classes: first, receipt books showing receipts of small sums of money, pads containing certificates of contributions to the Communist Party's Presidential Election Campaign Fund, receipts for rent of a post office box, and Communist Party membership books; secondly, printed matter consisting of magazines, pamphlets, and copies of the "Daily Worker," styled the "Central Organ of the Communist Party," and the "Southern Worker," also, apparently, an official newspaper of the party; thirdly, two books, one "Life and Struggles of Negro Tolkens," by George Padmore, and the other "Communism and Christianity Analyzed and Contrasted from the Marxian and Darwinian Points of View" by Rt. Rev. William Montgomery Brown, D.D.; fourthly, transcripts of minutes of meetings apparently held in Atlanta; fifthly, two circulars, one of which was prepared by the appellant and both of which had been circulated by him in Fulton County. All of these may be dismissed as irrelevant except those falling within the first and second groups. No inference can be drawn from the possession of the books mentioned, either that they embodied the doctrines of the Communist Party or that they represented views advocated by the appellant. The minutes of meetings contain nothing indicating the purposes of the organization or any intent to overthrow organized government; on the contrary, they indicate merely discussion of relief for the unemployed. The two circulars, admittedly distributed by the appellant, had nothing to do with the Communist Party, its aims or purposes, and were not appeals to join the party but were concerned with unemployment relief in the county and included appeals to the white and Negro unemployed to organize and represent the need for further county aid. They were characterized by the Supreme Court of Georgia as "more or less harmless."

The documents of the first class disclose the activity of the appellant as an organizer but, in this respect, add nothing to his admissions.

The matter appearing upon the membership blanks is innocent upon its face however foolish and pernicious the aims it suggests. Under the heading "What is the Communist Party?" this appears:

"The Party is the vanguard of the working class and consists of the best, most class conscious, most active, the most courageous members of that class. It incorporates the whole body of experience of the proletarian struggle, basing itself upon the revolutionary theory of Marxism and representing the general and lasting interests of the whole of the working class, the Party personifies the unity of proletarian principles, of proletarian will and of proletarian revolutionary action."

"We are the Party of the working class. Consequently, nearly the whole of that class (in time of war and civil war, the whole of that class) should work under the guidance of our Party, should create the closest contacts with our Party."

This vague declaration falls short of an attempt to bring about insurrection either immediately or within a reasonable time but amounts merely to a statement of ultimate ideals. The blanks, however, indicate more specific aims for which members of the Communist Party are to vote. They are to vote Communist for

"1. Unemployment and Social Insurance at the expense of the State and employers.

"2. Against Hoover's wage-cutting policy.

"3. Emergency relief for the poor farmers without restrictions by the Government and banks; exemption of poor farmers from taxes and from forced collection of rents or debts.

"4. Equal rights for the Negroes and self-determination for the Black Belt.

"5. Against capitalistic terror: against all forms of suppression of the political rights of the workers.

"6. Against imperialist war; for the defense of the Chinese people and of the Soviet Union."

None of these aims is criminal upon its face. As to one, the fourth, the claim is that criminality may be found because of extrinsic facts. Those facts consist of possession by appellant of booklets and other literature of the second class illustrating the party doctrines. The state contends these show that the purposes of the Communist Party were forcible subversion of the lawful authority of Georgia. They contain, inter alia, statements to the effect that the party bases itself upon the revolutionary theory of Marxism, opposes "bosses' wars," approves of the Soviet Union, and desires the "smashing" of the National Guard, the O.M.T.C., and the R.O.T.C.

A booklet entitled "The Communist Position on the Negro Question," on the cover of which appears a map of the United States having a dark belt across certain Southern states and the [251] phrase "Self-Determination for the Black Belt." * * * affirms that the source of the Communist slogan "Right of Self-Determination of the Negroes in the Black Belt" is a resolution of the Communist International on the Negro question in the United States adopted in 1930, which states that the Communist Party in the United States has been actively attempting to win increasing sympathy among the negro population, that certain things have been advocated for the benefit of the Negroes in the Northern states, but that in the Southern portion of the United States the Communist slogan must be "The right of Self-Determination of the Negroes in the Black Belt." The resolution defines the meaning of the slogan as:

(a) Confiscation of the landed property of the white landowners and capitalists for the benefit of the negro farmers * * * Without this revolutionary measure, without the agrarian revolution, the right of self-determination of the Negro population would be only a Utopia-or, at best, would remain only on paper without changing in any way the actual enslavement.

(b) Establishment of the State Unity of the Black Belt. * * * If the right of self-determination of the Negroes is to be put into force, it is necessary wherever possible to bring together into one governmental unit all districts of the South, where the majority of the settled population consists of negroes. * * *

(c) *Right of Self-Determining.* This means complete and unlimited right of the negro majority to exercise governmental authority in the entire territory of the Black Belt, as well as to decide upon the relations between their territory and other nations, particularly the United States. * * * First of all, true right of self-determination means that the negro majority and not the white minority in the entire territory of the administratively [252] united Black Belt exercises the right of administering governmental, legislative and judicial authority. At the present time all this power is concentrated in the hands of the white bourgeoisie and landlords. It is they who appoint all officials, it is they who dispose of public property, it is they who determine the taxes, it is they who govern and make the laws. Therefore, the overthrow of this class rule in the Black Belt is unconditionally necessary in the struggle for the negroes' right to self-determination. This, however, means at the same time the overthrow of the yoke of American

imperialism in the Black Belt on which the forces of the local white bourgeoisie depend. Only in this way, only if the negro population of the Black Belt wins its freedom from American imperialism even to the point of deciding itself the relations between its country and other governments, especially the United States, will it win real and complete self-determination. One should demand from the beginning that no armed forces of American imperialism should remain on the territory of the Black Belt. [Emphasis supplied.]

Further statements appearing in the pamphlet are:

Even if the situation does not yet warrant the raising of the question of uprising, one should not limit oneself at present to propaganda for the demand "Right to Self-Determination," but should organize mass actions, such as demonstrations, strikes, boycott movements, etc. [Emphasis supplied.]

One cannot deny that it is just possible for the negro population of the Black Belt to win the right to self-determination during capitalism; but it is perfectly clear and indubitable that this is possible only through successful revolutionary struggle for power against the American bourgeoisie, through wresting the negroes' right of self-determination from American imperialism. Thus, the slogan of right to self-determination is a real slogan of National Rebellion which, to be considered as such, need not be [258] supplemented by proclaiming struggle for the complete separation of the negro zone, at least not at present.

There is more of the same purport, particularly evidence to the "revolutionary trade unions in the South," "revolutionary struggle against the ruling white bourgeoisie," and "revolutionary program of the Communist Party."

Mr. PEREZ, Mr. Chairman, I greatly appreciate the opportunity of appearing before your committee. I hope I have covered the subject. I would be glad to answer any questions which members of the committee may want to put to me.

(The complete statement of Mr. Perez follows:)

BRIEF TO THE SENATE JUDICIARY COMMITTEE ON S. 1564 TO PRESCRIBE VOTER QUALIFICATIONS BY JUDGE L. H. PEREZ, REPRESENTING GOV. JOHN J. McKEITHEN, OF LOUISIANA

The purpose of this statement, I submit, is to show the unconstitutionality of this piece of legislation and to point out its dangers to our American democratic system.

"At the time the Constitution was framed, it provided for only a limited franchise," according to University of Chicago Law Professor Philip Kurland, and all legal authorities.

The first paragraph of article I, section 2, of the U.S. Constitution, reads as follows:

"The States, in prescribing the qualifications of voters for the most numerous branch of their own legislatures, do not do this with reference to the election for Members of Congress. Nor can they prescribe the qualification for voters for those ex nomine. They define who are to vote for the popular branch of their own legislature, and the Constitution of the United States says the same persons shall vote for Members of Congress in that State. It adopts the qualification thus furnished as the qualification of its own electors for Members of Congress. It is not true, therefore, that electors for Members of Congress owe their right to vote to the State law in any sense which makes the exercise of the right to depend exclusively on the law of the State. *Ex parte Yarbrough* (Ga. 1884) 4 Sup. Ct. 152, 110 U.S. 633, 28 L. Ed. 274. See also, *United States v. Mosley* (Okla. 1915) 35 Sup. Ct. 904, 238 U.S. 383, 59 L. Ed. 1355; *Feltz v. United States* (C.C.A. La. 1911) 186 F. 685."

This article has universally been interpreted to mean that the subject of voter qualifications is left entirely up to the States. The only limitation is that there shall be no discrimination because of race, color, or previous condition of servitude.

The 17th amendment to the Constitution repeats the language of article I, section 2, and reads:

"The electors in each State shall have the qualifications requisite for electors in the most numerous branch of the State legislature."

This language of the Constitution was clearly interpreted by the Supreme Court of the United States in *Ex parte Yarborough*, 110 U.S. 663, 4 Sup. Ct. 152, 28 L. Ed. 274 (1884), as follows:

"The States in prescribing the qualifications of voters for the most numerous branch of their own legislatures, do not do this with reference to the election for Members of Congress. Nor can they prescribe the qualification for voters for those ex nomine. They define who are to vote for the popular branch of their own legislature, and the Constitution of the United States says the same persons shall vote for Members of Congress in that State. It adopts the qualification thus furnished as the qualification of its own electors for Members of Congress."

The Court went on to say that the 15th amendment substantially confers upon the Negro the right to vote.

In *Pope v. Williams*, 193 U.S. 621, 24 Sup. Ct. 573, 48 L. Ed. 817, the Supreme Court of the United States said:

"The simple matter to be herein determined is whether, with reference to the exercise of the privilege of voting in Maryland, the legislature of that State had the legal right to provide that a person coming into the State to reside should make the declaration of intent a year before he should have the right to be registered as a voter of the State. The privilege to vote in any State is not given by the Federal Constitution, or by any of its amendments. It is not a privilege springing from citizenship of the United States. *Minor v. Happersett*, 21 Wall. 162, 22 L. Ed. 627. It may not be refused on account of race, color, or previous condition of servitude, but it does not follow from mere citizenship of the United States. In other words, the privilege to vote in a State is within the jurisdiction of the State itself, to be exercised as the State may direct, and upon such terms as to it may seem proper, provided, of course, no discrimination is made between individuals, in violation of the Federal Constitution." [Emphasis added.]

The Court went on to say "the right of a State to legislate upon a subject of the elective franchise as to it may seem good, subject to the conditions already stated, we believe, unassailable."

In *Snowden v. Hughes*, 321 U.S. 1, 88 L. Ed. 497 (1943), the Court said "the right to become a candidate for State office, like the right to vote for election for State officers, is a right or privilege of State citizenship, not of national citizenship * * *"

More recently in the case of *Lassiter v. North Hampton County Board of Elections*, 360 U.S. 45, 3 L. Ed. 2d 1072, 79 Sup. Ct. 985 (June 8, 1959), Mr. Justice Douglas, speaking for a unanimous Supreme Court, said:

"We come then to the question whether a State may consistently with the 14th and 17th amendments apply a literacy test to all voters irrespective of race or color. The Court in *Guttm v. United States*, supra (238 U.S. at 386), disposed of the question in a few words, 'No time need be spent on the question of the validity of the literacy test considered alone since as we have seen its establishment was but the exercise by the State of a lawful power vested in it not subject to our supervision, and indeed, its validity is admitted.'"

"The States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised. *Pope v. Williams*, 193 U.S. 621, 638, 48 L. Ed. 817, 822, 24 Sup. Ct. 573; *Mason v. Missouri*, 179 U.S. 328, 335, 45 L. Ed. 214, 220, 21 Sup. Ct. 125, absent of course the discrimination which the Constitution condemns. Article 1, section 2 of the Constitution in its provision for the election of Members of the House of Representatives and the 17th amendment in its provision for the election of Senators provide that officials will be chosen 'by the people.' Each provision goes on to state that 'the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.' So while the right of suffrage is established and guaranteed by the Constitution (*Ex parte Yarborough*, 110 U.S. 651, 663-665, 28 L. Ed. 274, 278, 279, 4 Sup. Ct. 152; *Smith v. Allwright*, 321 U.S. 649, 661, 662, 88 L. Ed. 987, 995, 998, 64 Sup. Ct. 767, 151 A.L.R. 1110) it is subject to the imposition of State standards which are not discriminatory and which do not contravene any restriction that Congress, acting pursuant to its constitutional powers, has imposed. See *United States v. Classic*, 313 U.S. 299, 315, 85 L. Ed. 1368, 1377, 61 Sup. Ct. 1031. While section 2 of the 14th amendment, which provides for apportionment of Representatives among the States according to their respective numbers counting the whole number of persons in

each State (except Indians not taxed), speaks of 'the right to vote,' the right protected 'refers to the right to vote as established by the laws and constitution of the State.' *McPherson v. Blacker*, 146 U.S. 1, 39, 36 L. Ed. 869, 878, 13 Sup. Ct. 3.

"We do not suggest that any standards which a State desires to adopt may be required of voters. But there is wide scope for exercise of its jurisdiction. Residence requirements, age, previous criminal record (*Davis v. Beason*, 183 U.S. 333, 345-347, 33 L. Ed. 687, 641, 642, 10 Sup. Ct. 299) are obvious examples indicating factors which a State may take into consideration in determining the qualifications of voters. The ability to read and write likewise has some relation to standards of the ballot. Literacy and illiteracy are neutral on race, creed, color, and sex, as reports around the world show. Literacy and intelligence are obviously not synonymous. Illiterate people may be intelligent voters. Yet in our society where newspapers, periodicals, books, and other printed matter canvass and debate campaign issues, a State might conclude that only those who are literate should exercise the franchise. Cf. *Franklin v. Harper*, 205 Ga. 779, 55 S.E. 2d 221, app. dismd. 339 U.S. 946, 94 L. Ed. 1361, 70 Sup. Ct. 804. It was said last century in Massachusetts that a literacy test was designed to insure an 'independent and intelligent' exercise of the right of suffrage. *Stone v. Smith*, 159 Mass. 413, 414, 34 N.E. 521. North Carolina agrees. We do not sit in judgment on the wisdom of that policy. We cannot say, however, that it is not an allowable one measured by constitutional standards."

The Court concluded:

"Certainly we cannot condemn it on its face as a device unrelated to the desire of North Carolina to raise the standards for people of all races who cast the ballot."

The 10th amendment of the Constitution of the United States reads as follows: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Section 1 of the 24th amendment of the Constitution of the United States reads as follows:

"The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax."

According to Attorney General Nicholas Katzenbach, "this bill applies to every kind of election, Federal, State, and local, including primaries." The formula used is calculated to attack the States of Mississippi, Alabama, Louisiana, Georgia, South Carolina, Virginia, and 34 counties in North Carolina. An article in *Time* magazine, volume 85, number 13, March 26, 1965, page 23, mentions that the formula catches "innocent fish," one county in Maine, one county in Idaho, one county in Arizona, and the State of Alaska. According to that article, Mr. Katzenbach stated "as far as I know, it may have snowed in Maine on election day, and that is why they had a low turnout." These counties and Alaska would be immediately excluded, thereby placing the full force and effect of this vindictive legislation against seven Southern States. It is not by coincidence that these States registered a large vote against the President of the United States. *Time* magazine, in the above article, states that it is "by no coincidence that the formula is calculated to attack" these seven Southern States.

Whenever the word registration is used in any decision of the U.S. Supreme Court, it always refers to "qualified applicants for registration." This bill is designed to place unqualified applicants on the registration rolls of the mentioned States. This, according to the bill, will be accomplished by the removal of any literacy test and the replacement of local registrars with Federal registrars, solely at the discretion of the Attorney General. The purpose and effect of this bill is to water down the value of the qualified registrant or qualified voter in these States. The value of the qualified voter in these States will not be equal to the value of the qualified voters in other States or in the individual States. If one unqualified voter is placed on the roll for every qualified voter, then the qualified voter has one-half of a vote.

In *Reynolds v. Sims*, 12 L. Ed. 2d 506, decided June 15, 1964, the Court said "It has been repeatedly recognized that all qualified voters have a constitutionally protected right to vote." Again, the Court said "the concept of 'we the people' under the Constitution, visualizes no preferred class of voters but, equality

among those who meet the basic qualifications. The idea that every voter is equal to every other voter in his State, when he casts his ballot * * * underlies many of our decisions." Further, the Court said "to the extent that a citizen's right to vote is debased, he is that much less a citizen." His vote cannot be diluted and any law that dilutes his vote is unconstitutional. The Court said "this is the clear and strong command of our Constitution's equal protection clause."

The above principles were set forth in the reapportionment decisions of the Supreme Court. One person, one vote, not one-half of one vote.

Turning to the State of Louisiana, we find that the constitutionality of the application form is presently being considered by a three-judge Federal court. This application has been held by the Federal court to be a literacy test. When this case was argued before the court, the Honorable John Doar, Chief of the Civil Rights Division of the U.S. Justice Department, in his opening oral argument, conceded that under the Constitution, Louisiana had the right to require that a voter be literate. This bill would, in effect, do away with such requirement. It took Louisiana many years to require literacy. This requirement was bitterly opposed in the legislature by, and at times successfully, by the French-speaking parishes of southwest Louisiana, where there was a high rate of illiteracy. The requirement had nothing to do with race, but was an effort to sincerely upgrade the electorate. This effort should be complimented, not condemned. A more informed electorate will, naturally, cast a more informed vote.

The requirement of the bill to force litigation in the U.S. District Court in the District of Columbia is not only shocking to our conscience, but contrary to the Constitution. Everyone is presumed innocent until proven guilty; but this legislation presumes that the seven Southern States are guilty until they prove themselves innocent. This legislation shifts the burden of proof from one party to another and forces that party to litigate in a foreign court and requires the removal of witnesses to that foreign court. Article VII of the Constitution provides that in suits at common law, the right of trial by jury shall be preserved and no fact tried by a jury shall be otherwise reexamined in any court of the United States * * *. That article does not mean a jury in only one place in the United States, the District of Columbia.

The statements of the Attorney General before the House Judiciary Committee on the proposed voting rights bill of 1965 not only contains many typical inaccuracies, but is false in many respects. He complains that he has instituted many proceedings in the Federal court and lost these proceedings after trial and appeal. This, in itself, should be evidence of the fact that he and his predecessors in office were totally wrong in their unfair accusations as he was in his accusations of March 18, 1965. He mentions that the 1960 Civil Rights Act provides for the court to report a Federal registrar when a pattern or practice of discrimination is found. He fails to mention that he has many times sought a Federal registrar and has always failed because the law and evidence was to the contrary. Having failed to convince the courts of the United States, including the U.S. 5th Circuit Court of Appeals, which bends over backwards to assist him in his litigation, he now seeks to have the authority for him to appoint these registrars. He testified that the courts were wrong, but the truth of the matter is that he is wrong. He cites statistics which his employees have cited before the courts, but he fails to mention that an eminently qualified demographer testified that the statistics used by the Justice Department were "a dishonest way to present facts."

It is one thing to grant power to the Court, who are appointed for life and do not owe political allegiance, but it is entirely another thing to give these same powers to administrative personnel serving at the will of their political supervisor. To clothe the United States Justice Department with the power that this bill seeks to do would make police states out of the seven Southern States mentioned. The Attorney General does not like me, personally, and undoubtedly will appoint a Federal officer as registrar in the parish where I am president of the commission council. This will be done in spite of the fact that the U.S. district court has held that there is no discrimination in my parish, in spite of the fact that the entire system of registration in my parish is under his direct supervision of the U.S. district court with monthly reports made to that court; and in spite of the fact that the U.S. district court finds no fault whatsoever with registration in Plaquemines Parish. These findings were made after a lengthy trial wherein the Justice Department sought to have a Federal registrar appointed.

The Attorney General says that he will act upon the "meritorious complaints" in writing from 20 residents, and that this is justice and protection." In my

parish, not only was there a complaint from one registrant, but that registrant testified under oath before the Civil Rights Commission that he had been unduly denied registration. In subsequent Federal litigation, that same resident admitted that he had lied in previous sworn testimony. Naturally, this Justice Department refused to prosecute him for perjury but he would be considered a meritorious complainant.

The bill, according to the Attorney General, provides that the Federal registrar will register all persons having the qualifications of age, citizenship and residence. The bill seeks to set aside any requirement of the objective determination of good moral character. For instance, in Louisiana, the application form, provides that a person is not convicted of a felony without receiving a pardon; that a person shall not have been convicted of more than one misdemeanor and sentenced to a term of 90 days in jail, other than traffic or game violation within 5 years; that a person shall not have been convicted of any misdemeanor and sentenced to a term of 6 months or more in jail within 1 year; that a person shall not have lived with another in common-law marriage within 5 years, nor given birth to an illegitimate child within that period. Misdemeanors are numerous in Louisiana. I served as district attorney for many years and I feel that I am qualified to say that persons convicted of some misdemeanors are clearly not persons of good moral character. In Louisiana, common-law marriage is not only prohibited, but is a crime. Every State has had the problem of illegitimate births becoming more prevalent with the result a cost to the State for the support of the child and mother. Some States pay a premium for the number of illegitimate children, but fortunately we are overcoming this. In the conscience of any sincere American, such a person should not be allowed to vote. He should not be allowed to hold public office, and to qualify to hold public office a person need only be an elector.

In *Herdon v. Lowry*, 301 U.S. 242, 81 L. ed. 1066 (1936), the Court found that the policy of the Communist Party in the South, particularly as it applies to Negroes, is to obtain the right of self-determination. "This means complete and unlimited right of the Negro majority to exercise governmental authority in the entire territory of the Black Belt." The Black Belt consisted of the States of Louisiana, Mississippi, Alabama, Georgia, and South Carolina, the States involved here.

In the report of this case in 57 S.Ct. at pages 736-737, the Court found that:

"A book entitled 'The Communist Position on the Negro Question,' on the cover of which appears a map of the United States having a dark belt across certain Southern States and the phrase 'Self-Determination for the Black Belt,' affirms that the source of the Communist slogan 'Right of Self-Determination of the Negroes in the Black Belt' is a resolution of the Communist International on the Negro question in the United States adopted in 1930, which states that the Communist Party in the United States has been actively attempting to win increasing sympathy among the Negro population, that certain things have been advocated for the benefit of the Negroes in the Northern States, but that in the Southern portions of the United States the Communist slogan must be 'The Right of Self-Determination of the Negroes in the Black Belt.' The resolution defines the meaning of the slogan as:

"(a) Confiscation of the landed property of the white landowners and capitalists for the benefit of the Negro farmers * * *. Without this revolutionary measure, without the agrarian revolution, the right of self-determination of the Negro population would be only a Utopia or, at best, would remain only on paper without changing in any way the actual enslavement."

"(b) Establishment of the State Unity of the Black Belt. * * * If the right of self-determination of the Negroes is to be put into force, it is necessary wherever possible to bring together into one governmental unit all districts of the South, where the majority of the settled population consists of negroes. * * *

"(c) Right of self-determination. This means complete and unlimited right of the negro majority to exercise governmental authority in the entire territory of the Black Belt, as well as to decide upon the relations between their territory and other nations, particularly the United States. * * * First of all, true right of self-determination means that the negro majority and not the white minority in the entire territory of the administratively united Black Belt exercises the right of administering governmental legislative, and judicial authority. At the present time all this power is concentrated in the hands of the white bourgeoisie and landlords. It is they who appoint all officials, it is they who dispose of public property, it is they who determine the taxes, it is they who govern and make the laws. Therefore, the overthrow of this class rule in the Black Belt is un-

conditionally necessary in the struggle for the negroes' right to self-determination. *This, however, means at the same time the overthrow of the yoke of American imperialism in the Black Belt on which the forces of the local white bourgeoisie depend.* Only in this way, only if the Negro population of the Black Belt wins its freedom from American imperialism even to the point of deciding itself the relations between its country and other governments, especially the United States, will it win real and complete self-determination. One should demand from the beginning that no armed forces of American imperialism should remain on the territory of the Black Belt."

Further statements appearing in the pamphlet are: "*Even if the situation does not yet warrant the raising of the question of uprising, one should not limit oneself at present to propaganda for the demand 'Right to self-determination,' but should organize mass actions, such as demonstrations, strikes, boycott movements,*" etc. "One cannot deny that it is just possible for the Negro population of the Black Belt to win the right to self-determination during capitalism; but it is perfectly clear and indubitable that this is possible only through successful revolutionary struggle for power against the American bourgeoisie, through wresting the Negroes' right of self-determination from American imperialism. Thus, the slogan of right to self-determination is a real slogan of National rebellion which, to be considered as such, need not be supplemented by proclaiming struggle for the complete separation of the Negro zone, at least not at present."

There is more of the same purport, particularly reference to the "revolutionary trade unions in the South," "revolutionary struggle against the ruling white bourgeoisie," and "revolutionary program of the Communist Party."

So here we have of record the finding of fact by the U.S. Supreme Court, in 1937, before liberalization, that the Communist Party advocates voter registration of all Negroes, or the unlimited right of the Negro majority to exercise governmental authority in the entire territory of the Black Belt, as being unconditionally necessary in the ultimate struggle for the Negroes' right to self-determination and overthrow of the yoke of American imperialism in the Black Belt.

The purported Voting Rights Act of 1965, S. 1564, is designed to implement the Communist Party plan for the Black Belt and would provide its greatest impetus.

This bill undoubtedly is a hand-in-glove deal with the very "mass action demonstrations" which form part of the Communist revolutionary conspiracy in the Black Belt.

I suggest your committee's subcommittee on Internal Security have its staff gather reports available in its own files and from the files of the U.S. Attorney General and House Un-American Activities Committee on the Communist, subversive and Communist-front connections and activities of the persons and organizations leading these racial "mass action demonstrations," such as the ADA, NAACP, CORE, Martin Luther King's, Pitts Odell's, and Bayard Rustins' Southern Christian Leadership Conference, etc., and put copies of those official reports in the record of this hearing on the Black Belt's so-called Voting Rights Act of 1965, S. 1564.

I further suggest that this committee request FBI Director J. Edgar Hoover, to appear before it and testify with the help of his records, as to the subversive background of the principal leaders of these mass action demonstrations.

Mr. Chairman, I submit that a comparison of progressive and present-day unconstitutional usurpations by the Federal Government, under the baneful political influence of these subversive fronts with the indictments against tyranny in the Declaration of Independence will show to what extent constitutional government has deteriorated in this country.

Witness the long train of abuses and usurpations nullifying our State laws, the most wholesome and necessary for the public good; the dissolution of our legislatures; promoting invasion of our States from without, exciting domestic insurrections and creating convulsions within; obstructing the administration of justice against treason and anarchy; sending swarms of Federal marshals and quartering bodies of armed troops among us to harass our people without the consent of our legislature, making the military superior to the civil power; abolishing the forms and peaceful way of life to which they are accustomed and altering fundamentally the forms of our government; depriving us (and our State officials) in many cases of the benefits of trial by jury, especially in prosecutions under purported injunctions; and again threatening to subject us to a jurisdiction foreign to our Constitution and unacknowledged by our laws by a provision in S. 1564 that no act of our legislature prescribing voter qualifications

for electors in the most numerous branch of the State legislature (recognized by art. I, sec. 2 and the 17th amendment of the U.S. Constitution) shall have effect unless approved by the U.S. District Court for the District of Columbia.

Mr. Chairman, and gentlemen of the committee, may we leave with Congress a serious warning?

That in the light of the preliberalized Supreme Court's clear and emphatic finding on the purpose of the Communist Party's revolutionary plot for the Black Belt, you would be playing with fire to enact such an unconstitutional piece of Federal legislation to accommodate the Communist conspiracy.

Grant this part of the Communist plan of registration of all Negroes in the Black Belt, regardless of qualification, an dthe next step may well be Communist directed governmental authority in the entire territory of the Black Belt as the condition necessary in the Communist planned ultimate self-determination and overthrow of the "yoke of American imperialism in the Black Belt," with the collaboration and military backing of Communist Russia. Not now, no. But, what of the next generation when Russia may have an acknowledged superiority with its 100 megaton bombs and the capability to deliver them?

Remember Stalin's threat, that finally, the last bastion of capitalism, the United States, shall fall into their hands like an overripe fruit, without firing a shot?

Mr. Chairman, if the Communist Party through its various fronts has gained such unnatural power in national politics as to influence this type legislation, then please give a second thought to the warning plainly carried in the 1937 preliberalized U.S. Supreme Court decision in the *Herndon* case, and reject this part of the Communist Party plan for "self-determination of the Black Belt."

The CHAIRMAN. It is now 12 o'clock. Shall we recess until 2:15?

We will recess until 2:15.

(Whereupon, at 12 noon, the committee recessed to reconvene at 2:15 p.m.)

AFTERNOON SESSION

Senator ERVIN. Mr. Chairman, I would like to introduce for the record some things relating to Judge Perez' testimony. One is a letter from Senator John Sparkman addressed to me.

I am writing you in response to your inquiry concerning the number of Negroes who are registered voters in the State of Alabama at the time of the last presidential election. I shall rely on the Alabama State Sovereignty Commission for the data used in this connection.

At that time there were 200,000 Negroes of voting age with an educational attainment through the sixth grade. Of this number 20,000 were disqualified under Alabama law from registering and voting because of a prior conviction of a felony.

Out of the 180,000 eligible Negro voters, 115,000 were registered to vote in the State of Alabama; or, approximately 63.8 percent, such percentage being not too dissimilar from the percentage of whites registered to vote.

This percentage, 63.8, seems to be a more representative figure than the 20-percent figure used by the Justice Department which is the percentage of all Negroes over the age of 21 registered to vote in 1964.

I would like to have this letter printed in full at this point in the record.

The CHAIRMAN. It will be admitted in the record.

(The letter referred to follows:)

U.S. SENATE,
COMMITTEE ON BANKING AND CURRENCY,
Subcommittee on Housing,
March 29, 1965.

HON. SAM J. ERVIN, JR.,
U.S. Senate
Washington, D.C.

DEAR SAM: I am writing you in response to your inquiry concerning the number of Negroes who were registered to vote in the State of Alabama at the time of

the last presidential election. I shall rely on the Alabama State Sovereignty Commission for the data used in this connection.

At that time, there were 200,000 Negroes of voting age with an educational attainment through the sixth grade. Of this number, 20,000 were disqualified under Alabama law from registering and voting because of a prior conviction of a felony.

Out of the 180,000 eligible Negro voters, 115,000 were registered to vote in the State of Alabama; or, approximately 63.8 percent, such percentage being not too dissimilar from the percentage of whites registered to vote.

This percentage, 63.8, seems to be a more representative figure than the 20-percent figure used by the Justice Department which is the percentage of all Negroes over the age of 21 registered to vote in 1964.

I hope these figures will be of assistance to you.

With kindest personal regards and best wishes, I am,
Sincerely,

JOHN STABERMAN, U.S. Senator.

Senator ERVIN. I would also like to have printed in the record at this point an editorial from the Charlotte News, of March 16, 1965, entitled, "A Speech and a Bill" and an article by James J. Kilpatrick in the Washington Star, of March 25, 1965, entitled, "Voting Bill, 'Piles Wrong on Wrong.'" Also an editorial which appeared in the Evening Star, Washington Evening Star, of March 19, 1965, entitled, "The Voting Bill," which expresses the opinion:

We do not think it is proper to make this bill automatically applicable to States in which less than 50 percent of the people over 21 years of age voted in the last general election. A distinction must be made here in the case of people who are registered and those who actually vote. In our opinion this bill should also provide for reasonable literacy tests which, of course, would have to be given on a nondiscriminatory basis.

I would like to have that inserted in the record.

The CHAIRMAN. It will be admitted.

(The documents referred to follow:)

[From the Charlotte News, Mar. 16, 1965]

A SPEECH AND A BILL

Lyndon Johnson's most powerful speech as President of the United States raises a single, deeply troubling question: How can the President's stirring words be reconciled with what is known about the civil rights bill he proposes to introduce to Congress?

On the one hand, there is a speech full of the stuff of unity, alive with a rhetoric of freedom all Americans can applaud. On the other hand, there are the outlines of one of the most divisive pieces of legislation ever sent to a Congress of the United States. How can the words be squared with the means?

As a piece of speechmaking, the President's address to Congress last night is hard to fault. If it lacked the eloquence of a Roosevelt or the burnished phrase-making of a Kennedy, it did a Johnson proud. It was simple, direct, and, above all, forceful. It conveyed the unmistakable impression of a President who knows his mind and means to have his way. It was weakest at the end, overlong and inclining, finally, to tedium and the pseudopiety of some of the President's less fortunate Great Society speeches. Still, the overall effect was one of raw, impressive power.

Much in the speech stands without contest. It is true that Americans have been denied the right to vote. It is true that there is no cause for pride in the events that have taken place in Selma this past week. It is true—above all, it is true—that what we confront is not a northern or a southern problem, but an American problem. And it is true that to evade this problem is to deny America and much that has made this country great.

The President went beyond the self-evident to confront the hard task of understanding this diverse and sorely divided country. He bade Americans remember that the people of our Buffalos and our Birminghams see their problems differently and that in each city men and women of both races must behave in such a way

that they can live together afterwards. He recognized that the issues are not quite so clear-cut as the professional civil rights forces would have us believe: That there are grave issues of keeping order and peace in our country, and that free speech and free assembly are not licenses to irresponsibility. All this the President noted; all this needed badly to be noted.

But what of his central purpose before the Congress? What of the civil rights bill he proposes? Only sharp edges, cloaked in shadow, were visible. He would establish "a simple, uniform standard" for voting "in all elections—National, State, and local." He would "provide for voters to be voted by officials of the United States Government if local officials refuse." His manner was grim, at times almost menacing. "Experience has shown this is the only path * * *." And he brought the Congress to its feet, catching the mood of steamrolling assent: "There must be no delay, no hesitation, no compromise, without purpose."

The President's tone was of a man who does not wish to quibble over details: Pass a bill that will allow Negroes to vote everywhere and be done with it, he seemed to say. He was no more specific than that.

But the bill that administration officials have been discussing scarcely sounds like a measure designed to unite all Americans. It would single out Southern States or counties by the single, all-obliterating fact that they have fewer than 50 percent of "eligible" people voting or registered in the November 1964 elections. It would strip these States or counties of virtually all standards for voting except age and residence. It would provide for selecting Federal officials to see to it that everyone regarded as eligible by these standards was registered.

So the President's "single, uniform standard" apparently amounts to a Federal voting rule applied to all elections from the most humble local office on up. Standards of literacy—even the broad sixth-grade educational standards embodied in the Civil Rights Act of 1964—would go out the window. The States so treated would cease to shoulder any responsibility for their voters. Uncle Sam would do it all.

The bill thus described amounts to the most arrant discrimination against a few States in the name of the many. It would excuse any infringement of voting rights in most States while removing all control of voting from some States. It has the flavor of doubtful constitutionality. Worse, it is bitterly divisive by nature: it would set the Buffalos and the Birminghams farther apart rather than pull them closer together.

President Johnson plays the American people false when he says that "experience has plainly shown this is the only path." This bill did not spring out of experience with the voting mechanisms of the several States. It sprang hot and straight from the streets of Selma. It was written in the streets, out of the substance of angry protest. It is an invitation to retaliate against the Nation's Selmas with punitive law.

The President touched on the history of voting rights legislation in his speech. He told of the 1957 law that empowered the Attorney General to seek injunctions against obstruction of voting rights. He mentioned the difficulties of enforcement and the 1960 law that broadened enforcement powers, enabling courts to act more swiftly when a "pattern of discrimination" was found.

But he said nothing about the Civil Rights Act of 1964, which lies virtually unused on the statute books. Under this law State officials are required to set the same standards for all people seeking registration, to disregard minor errors and omissions and to presume that a person with a sixth grade education is literate. The Attorney General is empowered to bring voting suits before a three-judge court with appeals going directly to the Supreme Court to speed the process.

This law has not been tried out seriously. What might have been a legal test in Selma turned out instead to be a test of power, a desperate political contest that has set the stage for the wide-ranging legislation the President now seeks.

By asking for that legislation in the peremptory language he used last night, President Johnson has succumbed to that pressure. He has allowed the office of the presidency to be used as a pawn in the struggle that is going on. He has allowed the ardent demonstrators and the foolish Governor Wallace to set the stage for blind law. And he has urged the Congress to pass this blind law without so much as a hard look.

Let us hope that Congress refuses to pass this sort of bill. If the great mass of statutes now on the books is not sufficient to give every American who can meet reasonable State qualifications the right to vote, then the law needs to be amended.

But the answer is not to impose an iron Federal rule on a few Southern States, to invite the ghosts of occupation to revisit their old haunts. Such a law would not be a charter of freedom but a bill of indictment against a section of the country. It would do infinite harm.

[From the Washington Star, Mar. 25, 1965]

VOTING BILL "PILES WRONG ON WRONG"

By JAMES J. KILPATRICK

With so many interesting and pleasant things to write about—spring, Julie Andrews, Whitey Ford's arm—it is a pity, truly it is, to have to beg once again for a calm and thoughtful look at President Johnson's "Voting Rights Act of 1965." Yet this is a bad bill—bad in ways that need to be understood if something precious is to be preserved—and the lighter topics can wait, if Dr. Martin Luther King, Jr., can't.

This precious something is a system of government obedient to a written Constitution. If the Congress sacrifices this high principle to the pressures of a turbulent hour, the Congress may succeed in redressing some palpable wrongs, but a fearful price will be paid in the loss of ancient values.

Under our Federal system, the power to fix qualifications for voting clearly is lodged with the States. Article I, section 2, of the Constitution spells it out:

"The House of Representatives shall be composed of Members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature." In the whole of the Constitution, no more explicit provision can be found.

Time after time the Supreme Court itself has emphasized this reservation of power to the States. Just 6 years ago this spring, in the *Lassiter* case from North Carolina, the high court expressly reaffirmed an unbroken series of opinions to this effect:

"The States have long been held to have broad powers to determine the conditions under which the rights of suffrage may be exercised, absent, of course, the discrimination which the Constitution condemns. * * * The right of suffrage is subject to the imposition of State standards which are not discriminatory. * * * We do not suggest that any standards which a State desires to adopt may be required of voters. But there is wide scope for exercise of its jurisdiction. Residence requirements, age, previous criminal record, are obvious examples indicating factors which a State may take into consideration in determining the qualifications of voters. * * *

In the particular context of Johnson's bill, we should note carefully what this unanimous court went on to say. "The ability to read and write likewise has the relation to standards designed to promote intelligent use of the ballot. Literacy and illiteracy are neutral on race, creed, color, and sex, as reports around the world show * * *. In our society, where newspapers, periodicals, books, and other printed matter canvass and debate campaign issues, a State might conclude that only those who are literate should exercise the franchise."

In the final paragraph of this 1959 opinion, the Supreme Court condemned those trumped-up "literacy tests" that have been employed in some cases as "a device to make racial discrimination easy." But no such charge could be fairly brought against North Carolina's requirement that a prospective voter "be able to read and write any section of the constitution of North Carolina in the English language."

"That seems to us," said the Court, "to be one fair way of determining whether a person is literate, not a calculated scheme to lay a trap for the citizen."

This whole body of long-established law would be violated by the President's bill. This is a bill to establish, by Federal law, new "qualifications for voting" in certain States. The system contemplated under this bill would not be limited to registering those Negroes who might have been denied the franchise by reason of their race. The provisions would apply to "any person." Neither would the bill apply to Federal elections only; it would apply, on its own terms, to "any Federal, State, or local election." Section 3(A) of the bill spells this out. In the half a dozen affected States, "No person shall be denied the right

to vote in any Federal, State, or local election because of his failure to comply with any test or device." In section 3(B), "test or device" is defined to mean any requirement that a prospective voter "(1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character."

In brief, the bill undertakes to prohibit in these States the imposition of those very qualifications, when used without discrimination, that the Supreme Court repeatedly has approved.

It is said that no fewer than 80 Senators, including some good and able men, are ready to howl their approval of this destructive scheme. To say that "Alabama has brought this on herself" is both wrong and irrelevant. This bill is the work of Johnson and the Congress. On them lies the burden of piling wrong upon wrong. And they do it, incredibly, in the name of "rights."

[From the Evening Star, Mar. 12, 1965]

THE VOTING BILL

The voting bill which President Johnson has sent to Congress is, undeniably, a stringent, far-reaching bill. Equally undeniable, however—as pointed out by a principal architect of the measure, Minority Leader Dirksen—is the fact that Congress has tried three times in recent years to enact effective voting legislation, but this has not served to prevent flagrant discrimination against Negroes in some areas of the country, especially in the Deep South. The time for half-hearted legislative efforts, susceptible of evasion, has long since passed. This Congress should and will pass a law which will serve as a powerful instrument in striking down discrimination.

The bill, as introduced, falls short of the ideal. It should be amended or clarified in at least two respects.

We do not think it is proper to make this bill automatically applicable to States in which less than 50 percent of the people over 21 years of age voted in the last general election. A distinction must be made here in the case of people who are registered and those who actually vote. If less than 50 percent are registered, there is a strong implication of discriminatory practices, and the bill could properly apply. But a State should not be brought within its sanctions merely because too few people actually take the trouble to vote. In Virginia, for example, only about 42 percent of the total population of voting age took the trouble to turn out and vote in the 1964 election. But well over 50 percent are registered. Unless registered voters have been intimidated or otherwise prevented from voting, the State should not be penalized for lack of interest on the part of its people. We have not heard any complaint about substantial discrimination in registration or intimidation at the polls in Virginia.

In our opinion, this bill should also provide for a reasonable literacy test which, of course, would have to be given on a nondiscriminatory basis. We do not indorse, for example, tests which require the applicant to interpret anything. The opportunity which such tests afford for discrimination is all too plain—and all too often invoked. In this complex age, however, the best interests of our society will not be served by registering illiterates so that they may be marched to the polls, and told by demagogues how to vote. At the least a prospective registrant should be able to read and write, and possibly to answer a few factual questions concerning our scheme of government.

We are confident that these and other possible imperfections will be carefully examined in the committees handling the bill, and that, in the Senate at least, they will be thoroughly discussed and weighed in debate. Out of all this we think there will come a good bill.

Senator ERVIN. I would also like to have inserted in the record an article by Richard Wilson which appeared in The Washington Star of March 24, 1965, entitled "Question Lingers on Voting Bill."

The CHAIRMAN. It will be admitted.

Senator ERVIN. I would also like to have printed in the record an article from the Fayetteville Observer, Fayetteville, N.C., entitled "Vote Test Here Simple, and Same for Everyone."

Negroes and whites in Cumberland County have to do only two things, and all have to do it, regardless of race. They are required to read aloud the elections oath, and sign their names.

Whoever can do that can register and vote.

Further proof of the county's position on registration is the fact that Fayetteville's only precinct which is made up predominantly of Negro voters has a prominent Negro man as registrar.

He has the full backing of elections board Chairman G. E. Edgerton to register whomever he finds to have met qualifications.

He is Dr. Henry M. Eldridge, professor at Fayetteville State College, prominent member of the community and registrar in the 13th precinct.

Asked if he knew of any racial discrimination, direct or implied, in Cumberland's registration policies, Eldridge said he did not.

"I have found that anyone who wanted to register had an opportunity to do so," he told the Observer.

He confirmed the fact that the same simple test for registration is given Negroes and whites.

I would also like to call attention to this fact. About 23,000 persons voted in Cumberland County in last November's election. There are about 86,000 people in the county over 21. That means less than one-third of the eligible people voting. Why is this true?

The biggest reason, most observers believe, is the presence of Ft. Bragg. Thousands of military personnel choose not to declare North Carolina their home State, and therefore vote elsewhere by absentee.

That creates a big population total and depresses the percentage of people voting. It creates the illusion of discrimination, or some other artificial voting controls.

* * * Chances are they will be an inactive group.

The CHAIRMAN. It will be admitted.

(The documents referred to follow.)

[From the Washington Star, Mar. 24, 1965]

QUESTION LINGERS ON VOTING BILL

(By Richard Wilson)

The question that the advocates of the new voting rights bill have as yet failed to answer adequately is this: Why should literacy tests as a qualification for voting be perfectly all right in 45 of the 50 States, but invalid in the other 5?

If a voter in Alabama who cannot read or write is qualified to vote in a Federal or any other election why should not an illiterate New Yorker have the same right? The right to vote certainly has no connection with the number of people who vote, and it is manifestly unjust to bar an illiterate from voting in a State where less than 50 percent of the qualified voters cast their ballots, but to permit him to vote in a State where more than 50 percent of the voters go to the polls.

This, nevertheless, would be the effect in 606 counties in 10 States of the passage of the voter rights bill sent to Congress by President Johnson.

The only justification offered for this anomaly is that it is the only way to force election officials in those 10 States to register Negroes to vote. Otherwise, they will enforce prohibitive regulations that prevent Negroes from voting, but not enforce the same regulations on whites who could not meet the qualifications.

This is another example of the devious legislative tactics in the Johnson administration to achieve results by legal circumlocution. Another outstanding example is the aid to education bill that attempts to get around the church-state issue.

From the President's recent statements it can be concluded that what he really desires is the removal of virtually all restrictions on voting for persons 18 years old, and over, if they are sane, and in spite of the fact that the Supreme Court would have to reverse itself in finding that the imposition of reasonable qualifications is valid.

It must be admitted that literacy tests as a qualification for voting are honored in the breach in the North. Thirty States have no such requirements. States

that do have literacy requirements often do not enforce them, or the enforcement is so cursory as to be meaningless.

New York requires proof of an eighth grade education or demonstration of the ability to read as a requirement for voters. This excludes a great many people, including recently arrived Puerto Ricans, from voting and is being challenged in the courts. Previous Federal legislation proposals would have required a sixth grade education as proof of literacy.

Residency requirements are universal. In short, people are not born in this country with an inherent right to vote at any time or any place. This is a right for which they must qualify by tests that vary from State to State, and which was affirmed by a 1959 Supreme Court decision. The layman would think that the Constitution is quite clear on this point in its first article and in the 17th amendment, to say nothing of the 1959 decision of the Supreme Court.

Furthermore, the Johnson voting rights bill recognizes this principle by providing that a voter shall be stricken from the rolls if he fails to vote at least once in 3 consecutive years. Thus the Federal law would impose restrictions Congress regards as reasonable while outlawing other restrictions imposed by the State.

Why is not the issue confronted squarely? Why is Congress not asked to abolish literacy requirements in all States altogether?

The answer to that is clear. It is because literacy requirements have validity both in reason and in law. It makes sense that a voter should have at least an elementary ability to read and write the language of the country in which he resides. It makes sense that States should have the power to set reasonable minimum standards for voters, and the proposed law recognizes that by itself setting some standards. It hardly needs to be argued, also, that a Federal law should apply equally to the citizens of all States.

The strange, awkward and unequal nature of this new legislation shows how wrong it is to try to legislate on such complicated matters in an atmosphere of violence-provoking public demonstrations.

The Johnson administration was rushed into the presentation of a law that has so many obvious flaws that it can immediately be challenged in the courts. Elaborate and tricky formulas provide no answer for a more basic question: Why in a Nation with compulsory, universal public education are so many people, Negro and white, illiterate? And why should there be a premium on illiteracy in some States and not in others?

[From the Fayetteville Observer, Mar. 23, 1965]

NO BIAS FOUND—VOTE TEST HERE SIMPLE, AND SAME FOR EVERYONE

(By Bill Wright)

No, Mr. Katzenbach, there was no snowstorm.

There might be one, though, in July, before enough Cumberland County folks vote so as to exempt the county from provisions of the proposed voting rights law.

Fact is, far less than one-third, much less one-half, the qualified voters within the bounds of Cumberland County voted in last November's general election.

The reason is another matter.

A close look strongly indicates that Attorney General Katzenbach did Cumberland County an injustice when he "indiscriminately" lumped 34 eastern North Carolina counties with Mississippi in a statement on registration procedures, and said "snow didn't keep them away from the polls."

The implication was there that is racial discrimination.

The study shows there is none.

Unless the discrimination is much subtler than a cynical reporter can detect, none exists in the Cumberland County elections office against Negroes registering to vote.

From what can be learned, registrars go further than they might to help a Negro get registered, becoming at times almost paternal.

The figures support the conclusion.

And so do Negroes themselves.

REGISTRATION REQUIREMENTS

A Negro, when he goes to register, must prove only that he can read and write, as must everyone.

It is widely known that the test for proving that can be so manipulated as to bar almost anyone from registering. That is the problem in Alabama and Mississippi. There, the charge is, Negroes are given a much harder reading and writing test than whites.

Negroes and whites in Cumberland County have to do only two things, and all have to do it, regardless of race. They are required to read aloud the elections oath, and sign their names.

Whoever can do that can register and vote.

Further proof of the county's position on registration is the fact that Fayetteville's only precinct which is made up predominantly of Negro voters has a prominent Negro man as registrar.

He has the full backing of elections board chairman, G. E. Edgerton, to register whomever he finds to have met qualifications.

He is Dr. Henry M. Eldridge, professor at Fayetteville State College, prominent member of the community and registrar in the 13th precinct.

Asked if he knew of any racial discrimination, direct or implied, in Cumberland's registration policies, Eldridge said he did not.

"I have found that anyone who wanted to register had an opportunity to do so," he told the Observer.

He confirmed the fact that the same simple test for registration is given Negroes and whites.

The length to which registrars sometimes go to help a Negro get on the registration rolls was shown recently when a man came to the elections office and asked to be registered.

The registrar filled out his form, and asked that he read the oath.

She learned by questioning him that he was going to night school. But his reading was quite elementary.

The registrar coaxed, helping him get through the oath. Finally, it appeared he could not do it.

She offered to give him another chance when his reading proficiency improved through his night study.

Another man came recently to Eldridge. He could read, but could not see well enough to read the oath. Eldridge went to great lengths, even trying to obtain the oath in braille, to determine that he could read. He was eventually registered.

REGISTRATION BREAKDOWN

Cumberland County at the moment has 31,178 voters registered. Of the total, 24,595 are white, 6,581 Negro.

Chairman Edgerton said that, although he did not have exact figures, within the past year his office registered a larger percentage of Negroes than whites. (Percentage based on the number registered to population.)

A year ago, the total registrations were 31,638. That total was cut by a recent purge of the books, cutting the total back to its present level.

The purge cut white registrants from 25,798 then to 24,595 now. Despite the purge, the Negro registration total has increased—from 5,840 a year ago to 6,581.

The fact remains that Cumberland is among 34 North Carolina counties that would qualify for Federal registrars under the voting rights bill. The bill would allow Federal registrars to go into a county in which less than 50 percent of the population over 21 years of age in the 1960 census voted in the last general election.

About 23,000 persons voted in Cumberland County in last November's election. There are about 86,000 people in the county over 21. That means less than one-third of the eligible people voted.

FORT BRAGG PERSONNEL

Why is this true?

The biggest reason, most observers believe, is the presence of Fort Bragg. Thousands of military personnel choose not to declare North Carolina their home State, and, therefore, vote elsewhere by absentee.

That creates a big population total and depresses the percentage of people voting. It creates the illusion of discrimination, or some other artificial voting controls.

Discrimination, of course, is the assumption in the voting rights bill in picking counties with less than 50 percent voting.

The Government might send Federal registrars here, but chances are they will be an inactive group.

The CHAIRMAN. Is that 1 of 34 counties?

Senator ERVIN. That is 1 of 34 counties.

Mr. Chairman, we have as many as 40,000 to 50,000 men stationed there at Fort Bragg at times. We have two other counties.

The CHAIRMAN. That county is with this.

Senator ERVIN. Yes; and we have two other counties where the same situation prevails: Wayne County, where the Seymour Johnson Air Force Base is located, and Craven County, where the Marine installation at Cherry Point is located.

These three counties are included in the 34 merely because the military and Marine personnel do not choose to register and vote.

NEED FOR REVISION OF VOTING STATISTICS

In the determination of countries or political subdivisions to be included under the operation of S. 1564, there are certain unusual factors which must necessarily be considered.

Because of the arbitrary standards set up in this bill, the people included within the voting-age population are not necessarily selected because of a habit of voting within these counties or political subdivisions.

As a matter of historical fact, for example, the great majority of servicemen continue to vote by absentee ballot in their home State. However, when a census of voting-age population is taken by the Bureau of Census, these servicemen are included in the total voting-age population of the political subdivision in which they are located.

I submit, that to arrive at a truly reflective number for the voting-age population, these servicemen should be excluded. Likewise, then, the percentage of people voting or registering to vote in such political subdivision should be taken without inclusion of such military personnel.

A striking example of this occurs in Onslow County, N.C., which has a so-called voting-age population of 39,003. Camp Lejeune is located in Onslow County. The Bureau of Census lists Camp Lejeune as having 25,572 men in its military labor force. By removing this number we arrive at the more representative figure of 13,431 people of voting-age in that county, of which 9,726 voted in the 1964 presidential election, or 72.4 percent.

County	Voting age population	Voted in 1964 presidential election	Percent-age	Total military population ¹	Male military labor force ²	Revised voting age population	Revised percent-age ³
Cumberland (Fort Bragg and Pope Air Force Base).....	77,068	22,967	29.8	34,102	23,900	43,166	47.6
Onslow (Camp Lejeune).....	39,003	9,726	24.9	32,667	25,572	13,431	72.4
Craven (Cherry Point).....	31,226	12,113	38.8	13,044	6,035	25,171	48.1
Wayne (Seymour Johnson Air Force Base).....	45,103	13,346	29.59	7,685	4,181	40,922	82.6

¹ Includes military personnel, dependents, and civilians working on the military reservation.

² Represents officer and enlisted personnel stationed in each county at the designated bases.

³ Excludes military personnel from voting age population.

I would like to also put into evidence in the record an editorial from the Washington Star for March 26, 1965, entitled "Illogical Is the Word," which points out how ridiculous it is to place Louisiana under this bill and omit Texas from its provisions—63.5 percent of the eligible persons in Louisiana are registered. 47.3 of those in Louisiana have voted as compared with the 44.4 of those who voted in the State of Texas.

The CHAIRMAN. It will be admitted.
(The document referred to follows:)

[From the Evening Star, Mar. 26, 1965]

ILLOGICAL IS THE WORD

Virginia's Senator Willis Robertson commented the other day that the pending voting bill "rests upon an assumption that is bad logic as well as bad law."

The issue as to bad law is hardly one for laymen. Let's leave that to the lawyers and the judges. The matter of logic, however, is in a somewhat different category.

In an address to the Senate this week, Senator Ellender, of Louisiana, while attacking the bill on constitutional grounds, also made an interesting point in the area of logic.

The sanctions in this bill would apply to Louisiana because that State has a literacy test and because only 47.3 percent of all persons of voting age actually voted in the 1964 election. (Some 63.5 percent of the eligibles are registered in Louisiana and could have voted had they taken the trouble to do so.) The bill would not apply to New York, which also has a literacy test, because more than 50 percent of the eligibles did vote in 1964. And, interestingly enough, neither would it apply to Texas. Texas has a poll tax, which Louisiana does not. But Texas does not have a literacy test. Therefore, it is exempted from the bill although only 44.4 percent of its eligibles voted in 1964, as compared to 47.3 in Louisiana. The logic eludes us.

It may be worth pointing out that the 1964 Civil Rights Act provides that anyone with a sixth-grade education is presumed to be literate. This is a rebuttable presumption and differs from the New York standard, under which an eighth-grade education is conclusive on the point of literacy. But even a sixth-grade showing would offer some assurance that a prospective voter will at least be able to read and write passably well.

As we have stated before, we think reasonable literacy tests, given without discrimination, are desirable. We also have expressed the view that the percentage of eligibles who are registered, as distinguished from those who voted or didn't take the trouble to vote in a given election, is the better standard. Senator Ellender's comparison of the situation in his State with that in Texas tends to confirm us in these beliefs.

Senator ERVIN. I would also like to read into the record this part of a letter which I received from William Joslin, chairman of the North Carolina Board of Elections, addressed to myself.

The State board of elections is, of course, concerned that the proposed voting bill would wipe out the literacy tests in approximately 84 counties. This would leave the test still in force in the remaining 66 counties, thus creating a rather anomalous situation. An illiterate person might be eligible to vote in Johnston County but ineligible if he crossed into Wake.

It may be of interest to you that the State board of elections has been conducting a special instruction school for members of the county boards of election at least once every year for the past 5 or 6 years. At these schools we have always stressed that the literacy test must be applied fairly to all applicants. Since the passage of the 1961 and 1964 Civil Rights Acts, we have advised the registrars to keep written records of all literacy tests. I know of only one or two formal complaints in recent years about the handling of the literacy tests. In one instance the State board of elections helped to iron out the situation, and in the other instance the Federal district court entered an order that seemed to clear up the difficulty.

I might add that in the Federal district court case there is a case where an opinion was introduced in evidence to show that within 12 days after the complaint was made the conditions causing the complaint were corrected to everybody's satisfaction.

I would also like to put into the record at this place an editorial from the "Greensboro Daily News" of Greensboro, N.C., for March 23, 1965, which makes certain observations, among them:

It is grossly unfair to infer that simply because 50 percent of the eligible voters failed to go to the polls, racial discrimination is the reason.

And this observation:

The Federal Government's duty is to see that all citizens are allowed to register and vote if they desire to do so. It is not to create special rules for some citizens which do not apply to all citizens. And that quite clearly would be done if literacy tests and other voter qualifications are abolished in certain areas but allowed to flourish in others.

Basic constitutional principles are involved on both sides of this controversy over suffrage rights. One principle ought not to receive higher priority than another closer home, and the Attorney General should watch his blanket indictments based on fuzzy statistics.

The CHAIRMAN. That will be admitted.
(The documents referred to follow.)

STATE BOARD OF ELECTIONS,
Raleigh, N.C., March 26, 1965.

HON. SAM J. ERVIN,
Senate Office Building,
Washington, D.C.

DEAR SENATOR ERVIN: The State board of elections is of course concerned that the proposed voting bill would wipe out the literacy tests in approximately 34 counties. The would leave the test still in force in the remaining 66 counties, thus creating a rather anomalous situation. An illiterate person might be eligible to vote in Johnston County but ineligible if he crossed into Wake.

It may be of interest to you that the State board of elections has been conducting a special instruction school for members of the county boards of election at least once every year for the past 5 or 6 years. At these schools we have always stressed that the literacy test must be applied fairly to all applicants. Since the passage of the 1961 and 1964 Civil Rights Acts, we have advised the registrars to keep written records of all literacy tests. I know of only one or two formal complaints in recent years about the handling of the literacy tests. In one instance the State board of elections helped to iron out the situation and in the other instance the Federal district court entered an order that seemed to clear up the difficulty.

There are now pending at least two bills in the North Carolina Legislature that could change the registration pattern in this State. One of these is an act to implement the recently adopted constitutional amendment. It would permit the residence requirement for voters in Presidential elections to be lowered to 60 days. This bill has already passed the senate and has an excellent chance of passing the house. The other bill is a proposed constitutional amendment to reduce the residence requirement for all voters to 6 months. This has just recently been dropped into the hopper in the senate. It is perhaps premature to take a reading on its chances of passage. There is also a proposal of the State board of elections that will probably be introduced to permit the county boards of election to extend the period of registration. There has been some complaint that our registration period in the 80 or so counties that employ the precinct book-type registration is too short. Under the proposal the county boards of election could open up registration for as many additional Saturdays as they deem necessary.

It appears to me that many of our counties that now fall below the 50 percent registered voter test of the new bill might well be able to comply with such a test, given a chance to operate for a brief period of time under the three proposed bills set forth above. It may be that you could amend the pending bill to provide an alternative date for determining compliance with the 50 percent test.

I have asked our county boards of election to send certain information to you and to their respective Congressmen. I hope this information will be of some value. I will be glad to learn of your reaction to the legislation now pending before the North Carolina General Assembly. I would also like to know of any suggestions that you may have about additional State legislation.

With kind regards, I am

Sincerely yours,

WILLIAM JOSLIN,
Chairman, State Board of Elections.

[From the Greensboro Daily News, Mar. 23, 1965]

SPECIAL LAWS AND BLANKET INDICTMENTS

In the present tense situation in Alabama Federal officials—and indeed everyone connected with the civil rights controversy—should check carefully on facts and figures before sounding off in public.

Attorney General Nicholas Katzenbach failed to do this in remarks made before a House committee last Friday. The substance of his testimony was sound—much of the civil rights story in the South had been one of "intimidation, discouragement and delay" in the struggle to win full citizenship rights for Negroes.

But the Attorney General barked up the wrong tree when he dragged 34 eastern North Carolina counties into the picture and linked them with Alabama. The reference was to the projected abolition of literacy tests in counties where less than 50 percent of eligible citizens turned out to vote—and they included Aroostook County in Maine as well as most of four southern States, parts of Alaska and Arizona and 34 counties in North Carolina.

"They may have had a snowstorm in Aroostook County," the Attorney General told the committee, "but they didn't have a snowstorm in 34 counties of North Carolina, and they didn't have a snowstorm in Mississippi."

No, there was no snowstorm down here last November. But as for North Carolina neither was there specific "intimidation, discouragement or delay" in registration or voting for Negro citizens. The only protests about registration delays in North Carolina in recent years have been confined to one county, Halifax—and that situation has now been cleared.

Let it be understood by Mr. Katzenbach and others, including President Johnson and Rev. Martin Luther King, that North Carolina cannot be tarred with the brush of Alabama or Mississippi. Negro citizens have had the right to register to vote here just as other citizens have. They have been subjected to the same kind of literacy tests which apply for all other would-be voters—except in several very rare situations in Halifax County.

To equate conditions in North Carolina with those in Dallas County simply because less than 50 percent of the eligible voters went to the polls last November is presumptuous and inaccurate. It indicts the thinking behind the President's new Federal voting legislation.

There are far, far more reasons than racial discrimination behind some of the voting apathy in North Carolina, Mississippi or New York. As we noted the other day, the Guilford County Elections Board has tried to cooperate in getting more registrants on the books; a study of its recent efforts reveals that even voters signed up by an intensive campaign have stayed away from the general election in droves.

It is grossly unfair to infer that simply because 50 percent of the eligible voters failed to go to the polls, racial discrimination is the reason.

The more we study the President's Federal voting legislation, the more we are convinced that the 50 percent figure is ill-advised. Indeed, the whole idea of setting up special laws to cover certain statistical situations may not work fairly. The Federal Government's duty is to see that all citizens are allowed to register and vote if they desire to do so. It is not to create special rules for some citizens which do not apply to all citizens. And that quite clearly would be done if literacy tests and other voter qualifications are abolished in certain areas but allowed to flourish in others.

Basic constitutional principles are involved on both sides of this controversy over suffrage rights. One principle ought not to receive higher priority than another, closer home and the Attorney General should watch his blanket indictments based on fuzzy statistics.

Senator ERVIN. I would also like to put in a statement taken from the Washington Star, "Vote Bill Won't End Protests, CORE Chief Tells 500 Here."

The CHAIRMAN. It will be admitted.

Senator ERVIN. I would also like to offer to put in evidence an editorial from The Washington Post of Monday, March 29, 1965, which closes with these words:

We hope that Congress will substitute Federal action for State action so far as it is necessary to guarantee equality at the polls without any unnecessary encroachment upon the rights of the States to fix qualifications of voters.

The CHAIRMAN. That will be admitted.

Senator ERVIN. And an editorial from the Wall Street Journal of March 25, 1965, entitled "Incongruities in the Drama," which says, among other things:

At the same time the high political content of the issue is causing the national administration for its part, to stray from the paths of reality and Constitutionality.

The CHAIRMAN. It will be admitted.
(The documents referred to follow:)

VOTE BILL WON'T END PROTESTS, CORE CHIEF TELLS 500 HERE

(By James M. Coram, Star Staff Writer)

Quick passage of President Johnson's voter registration bill will not end civil rights demonstrations, a leading Negro spokesman predicted here yesterday. James Farmer, national director of the Congress of Racial Equality, told a rally of about 500 sympathizers they are on the crest of a great wave and must not let up the pressure if they are to secure eating, meeting, schooling, and "walk-in-the-street-in-peace rights" for Negroes.

He told members of CORE, of the Student Nonviolent Coordinating Committee, the Mississippi Freedom Democratic Party, and other militant civil rights groups gathered at Judiciary Square at Fifth and E Streets NW. that "to relax pressure now would be to relax progress."

IMMEDIATE DEMANDS

Washington CORE Director Herbert Woods spelled out seven immediate demands upon the Federal Government:

"That the Federal Bureau of Investigation stop taking notes and start arresting people; that the FBI enforce present civil rights laws; that brutality, intimidation, and murder in connection with civil rights demonstrations be made a Federal offense; that the FBI investigate on a day-to-day basis instead of only when sensational events happen; that Congress pass quick voter legislation; that Congressmen be unseated where large percentages of voter discrimination occur; and that new elections be held within 9 months after discriminated voters have been registered."

Farmer looked past Selma, Ala., where the march to Montgomery started yesterday, to Jonesboro, La., where he said Negroes are under a virtual "house arrest," because high school students of that race have refused to attend classes.

(From the Washington Post, Mar. 29, 1965)

DEBATING THE RIGHTS BILL

Opponents of the civil rights bill are getting less attention at the moment than supporters who wish to improve it. Since the bill has been subjected to critical analysis a number of short-comings have come to light. Several outstanding advocates of civil rights, such as Senator Javits, Representatives McCulloch, and Lindsay, and Roy Wilkins, executive director of the National Association for the Advancement of Colored People, are concerned about the pockets of discrimination that the bill would not reach. The questions they raise are serious ones which should be thoughtfully debated.

Attorney General Katzenbach has testified that the bill would prohibit discriminatory educational tests and devices in Louisiana, Mississippi, Alabama, Georgia, South Carolina, Virginia, and Alaska, 34 counties in North Carolina, and 1 county in each of 3 States—Arizona, Maine, and Idaho. But Texas, Tennessee, Florida, Arkansas, and Kentucky would not be covered, because they have no literacy tests, although some of their counties have low Negro registrations.

Ideally, the bill should apply wherever the vote is denied on racial grounds. As a practical matter, it is doubtless necessary to limit the areas into which Federal registrars may be sent. But there is nothing sacrosanct about the formula provided in the present bill. It would outlaw voter-qualification tests in States, or their subdivisions, in which less than 50 percent of the voting-age population was registered or voted in the last November election. Congress may be able to devise a better (and more inclusive) formula.

It has also been suggested that, instead of abolishing State literacy tests, where a pattern of discrimination is found, it would be enough to provide fair administration of those tests. Some of the States literacy tests have been outlawed by the courts because they have been found, as in the Alabama case, to be "merely a device to make racial discrimination easy." Others will doubtless be thrown out by the courts, but this does not necessarily mean that all literacy tests are bad. In the absence of such court decisions, discrimination could be arrested by naming Federal registrars to apply the tests impartially. This would ease the constitutional argument about the bill, and it might accomplish about the same result as the banning of all literacy tests in the areas to be covered.

At least it is salutary to have the Judiciary Committee examine these aspects of the bill with great care. The necessity for enactment of a strong bill to end denial of the franchise on racial grounds has been established beyond challenge. The details of the bill are still open to debate. We hope that Congress will substitute Federal action for State action so far as it is necessary to guarantee equality at the polls, without any unnecessary encroachment upon the right of the States to fix the qualifications of voters.

"NO!"

Farmer said he planned to lead a CORE unit into Jonesboro sometime next week and expected that the Louisiana town would become the new focal point of the Nation's civil rights activities.

"I've been told by some members of the press that the country is getting tired of demonstrations," Farmer said. "People keep asking me, 'After this new bill is passed, will you dry up and stop demonstrating?'"

"No!" the rally crowd responded.

Earlier, Farmer had demonstrators in a parade from the White House, ending the picketing there. They marched single file and at times stretched out five blocks, singing freedom songs as they walked.

Along the route Roman Catholic priests and seminarians acted as marshals to assure that no acts of civil disobedience would be committed. The group stopped at First Street and Louisiana Avenue NW, for 5 minutes of silent meditation while they faced the Capitol. They then moved to the square where they listened to speeches, showing little overt enthusiasm except when Farmer spoke.

Tickets went on sale yesterday for the two special trains that will take Washington area residents to Alabama to join the massive civil rights march there.

The Reverend Jefferson P. Rogers, Minister of Church of the Redeemer and chairman of the Southern Christian Leadership Conference units in the Washington area, said the sale, from 1 p.m. to 11 p.m., went "pretty well."

The trains are slated to depart from Union Station at 2 p.m. tomorrow and Wednesday. Groups here also are chartering planes and buses for the trip to Alabama.

Each train can carry 400 passengers. The round-trip fare is \$38.25. Both trains will leave Montgomery at 5:30 p.m. Thursday, arriving in Washington early Friday morning. Tickets for both trains are on sale at Union Station. Passengers on tomorrow's train will find accommodations Wednesday night at St. Jude's, a Roman Catholic school and hospital center outside Montgomery.

[From the Wall Street Journal, Mar. 25, 1965]

INCONGRUITIES IN THE DRAMA

The civil rights struggle, focusing this week on the march to Montgomery, is customarily described in terms of high drama, and certainly there has been no lack of violent incidents. Yet great drama, whether in real life or reflected on the stage, must have the ring of truth, and it seems to us that too often, on all sides, this one does not have that ring.

To say that is not to disparage the justice of the voter registration drive, condone the extreme southern segregationists, or question the depth of concern in the White House. On the contrary, the sympathy of the majority of Americans

is for the Negro cause, especially in so fundamental a field as voting, and not for a bullying sheriff or a recalcitrant Governor.

It is, rather, to say that all the protagonists are pursuing particular, highly political, interests which do not always add up to the Nation's best interest but which do produce incongruities and rob the drama of some of its reality.

Consider the frequently made comparison between the American demonstrations and the Indian resistance movement of Mahatma Gandhi. It is a little incongruous, to begin with, to equate the well-equipped Montgomery marchers, moving under the full panoply of U.S. Government military protection, with the Indian leader's wretched hordes.

Therein lies the major weakness of the analogy: Gandhi was protesting the foreign rule of his entire nation, not some local abuse. In the United States today the whole Federal Establishment, as well as most public opinion, is arrayed on the side of the Negro. We may be thankful it is so, but the present point is that against that awesome power the intransigent local politician can prevail only for a time. Ultimately the contest is unequal.

Such confrontations intensify the politics and the bitterness. Not only is it right that the Negro should have access to the polls equally with other citizens in his State; the extent of his success in reinforcing the right can also powerfully affect local politics. On a national scale, long before the present efforts, the Negro vote was showing its considerable influence in elections.

While there can be no quarrel with this development as such, it helps explain the bitter-end opposition of some of the southern politicians in municipal, county, or State office. In the Deep South especially they can play on, as well as mirror, white fears that some local political structures may eventually be taken over by Negroes through sheer force of numbers. It is remarkable that in all the long period of strife few outside the South appear to have recognized that this potential revolution actually is a problem requiring consideration and accommodation.

At the same time the high political content of the issue is causing the national administration, for its part, to stray from the paths of reality and constitutionality. The Government's attempts to redress wrongs also have obvious political advantages. It can hope to cement, for the time being anyway, the Negro vote without alienating the majority of the electorate. Last November demonstrated how feebly resentment, either South or North, could affect the outcome.

So it is that less than a year after passage of the Civil Rights Act, a couple of whose sections are open to constitutional question, we have a proposed voting law which is inherently inconsistent and seems flatly to contravene the Constitution. It is expected in Washington that the momentum of the administration's efforts to reassure the civil rights leaders will accelerate.

Beyond any proposed legislation, reality also tends to be submerged in some general attitudes. If the die-hard segregations err in supposing they can reverse the movement, so do the civil rights leaders and supporters err in thinking that endless disruption of the civil order spells the automatic fulfillment of their aspirations; it may delay them through exasperating the patience of the public.

Specific goals may indeed be won; more important is what is done with equal treatment or full citizenship. Too little attention has been paid to the Negro's own responsibility in the development of the society. The reality is that the society, with the best will in the world, cannot do everything for him or any other citizen.

That the various political interests play a large part in the issue is inevitable, since practically all national decisions are reached through the interaction of political interests. But those who lead groups or nations must, like other mortals, find time for cooling off and reflection lest they propel the drama to lengths that are not only incongruous but injurious.

Senator ERVIN. That is all for the time being.

The CHAIRMAN. Mr. Perez, do you have anything to say now?

STATEMENT OF JUDGE L. H. PEREZ, REPRESENTING GOV. JOHN J. McKEITHEN, OF LOUISIANA; ACCOMPANIED BY LUKE PETROVICH, COMMISSIONER OF PUBLIC SAFETY—Resumed

Mr. PEREZ. Yes, sir, Mr. Chairman; if you please, I would like to make two additional offers in connection with the subversive character of the persons and groups leading the mass action demonstrations and boycotts.

Mr. PEREZ. Mr. Chairman, I repeat, I would like to make two offers of additional evidence of the subversive character of the persons and groups engaged in mass actions, demonstrations, and boycotts as being a part of the Communist plan in the Black Belt as set out in the *Herndon* case by the U.S. Supreme Court. One is the finding, accompanied by photographs, of letters of Martin Luther King by characters who have been declared subversive and Communist by this committee. It is entitled "The Joint Legislative Committee on Un-American Activities," and particularly pages 95 to 107 which I would like to mark "Exhibit No. 7-A, Perez, Louisiana."

The CHAIRMAN. It will be admitted.

(The document referred to was marked "Exhibit No. 7-A, Perez, Louisiana," and is as follows:)

EXHIBIT 7A

By MR. ROGERS

Mr. Chairman, I have some further documentary evidence that I would like to offer into the record concerning the connections of the Southern Conference Educational Fund with certain activities which have been going on in the United States, particularly in the South, for some time. The first is a memo dated January 18, 1963, from Carl Braden to William Howard Mellish, "in re Martin Luther King." It's signed with Carl Braden's signature. It discusses the technique of how the Southern Conference Educational Fund has procured Martin Luther King to speak at a function of the Southern Conference Educational Fund in New York, and it discusses in detail their technique in making sure that he arrives at the right time, and properly; and their technique of putting influence to bear on him to make sure that he complies with what they want him to do. The letter is quite significant, and with the committee's permission, I would like to read it into the record. "Martin King has a bad habit of arriving late at meetings and assembly affairs such as the one we are planning in New York City on February 8. I have not been able to decide whether this is poor planning, or an unconscious resistance to the demands on his time, or a combination of both. In any event, it is a disconcerting fact which many sponsors learn to their sorrow a bit late. I think we should try to forestall a repetition at our meeting: we should also guard against the possibility that he will forget the engagement altogether. I, therefore, propose as follows: Either you or James Dombrowski should write him at his home asking him to come to a dinner with you, or Mogulescu, or some of the key people. The assembling for this dinner should be as early as possible, say around 5 or 5:30, so as to force Martin to leave Atlanta early in the day, and not wait until 6 p.m. to catch a plane. The dinner invitation to his home will serve to remind him of the engagement that night, and will also pin down whether he will be there. As soon as it becomes known that he has agreed to appear at our annual reception, there is going to be great pressure on him to forget about the affair. People like Ted Kheel, and the CORE group are very jealous of Martin's connections with a group like ours, and we must expect efforts to divert him. You have probably thought of all of this, but I thought I should put my 'two cents' in and send this with a copy to James Dombrowski," signed, "Carl."

This is significant because it is a letter from one identified Communist to another identified Communist, with a carbon copy to a third identified Communist, discussing one of the men who is a substantial political force in the United States today.

The next letter is a letter on the stationery of the Southern Farmer, Inc., dated February 26, 1960. It's signed with the initials, "A.W.W." which is Aubrey Williams, and it's addressed: "Dear Jim:" which would be James Dombrowski. It discusses Martin Luther King; it discusses the possible disappearance of \$100,000 of money from the Montgomery Improvement Association. It comments, and I quote: "King is playing a crafty game, he is taking his advice from the National NAACP, and Benny Mays. Neither of these sources have any place for the SCEF in their work." It discusses further by saying, "I think we had better stick to Negro leaders like Nixon, Gomillion, Simpkins, etc., it is hopeless to try to work with people like Mays, Clements, Seay, Abernathy, and people like those on your Dillard University faculty. Abernathy is a fool. Yesterday he tipped off the newspapers that the students at Alabama State

College were going to march on the cafeteria in the Montgomery courthouse; so when the students got there, the police and sheriff were there to greet them, yet King has made this man his bosom companion all the years he has been in Montgomery. I will have to say, Jim, that I am pretty well fed up with the personal leadership of King. I personally have very little confidence in the man's judgment. I think Ella Baker has more sense in her little finger, in people and wise courses of action than he has in his whole body. Sincerely yours, A.W.W."

The next document I want to place into evidence, Mr. Chairman, is a copy of the front and back of a photograph found in the files of James A. Dombrowski on October 4. The photograph is a picture of Martin Luther King, Anne Braden, Carl Braden, and James A. Dombrowski, and on the back of the photograph are handwritten notes in the handwriting of James A. Dombrowski as follows: "The Sixth Annual Conference of the Southern Christian Leadership Conference, Birmingham, Ala., September 25-28, 1962." Then the people who are in the picture are identified as follows: "Martin Luther King, Jr., responding to Anne Braden's speech; in background, A.B. (Anne Braden), Carl Braden, J.A.D. (James A. Dombrowski)." We offer this photograph into the record, Mr. Chairman.

We would like to further offer into the record, photographs of the front and back of a check issued by the Southern Conference Educational Fund, Inc., signed by Benjamin E. Smith, and James A. Dombrowski, dated March 7, 1963, to the order of Dr. Martin Luther King, Jr., \$167.74, with a notation on it, "New York expenses," and the endorsement of Dr. Martin Luther King, Jr., on the back. Apparently this check was to pay Dr. Martin Luther King's expenses to come to the annual fundraising meeting in New York that was discussed in some of the previous correspondence that I placed in the record before.

I would like to offer a copy of a letter on the stationery of the Southern Conference Educational Fund, apparently from Dr. Dombrowski as being found in his correspondence file, addressed to Dr. Lee Lorch, who has been identified as a Communist.

Among other things, this letter discusses certain joint-junctions between the Southern Conference Educational Fund, and the Southern Christian Leadership Conference. I will read the paragraph pertinent as follows: "We enclose a layout and text for the ad to be signed by the Southern Christian Leadership Conference, Dr. Martin Luther King, president; the Student Nonviolent Coordinating Committee, and SCEF. SCEF will raise the money, it will take about \$10,000 to place the ad in one newspaper in each of the fifteen States; \$20,000 in two papers per State."

The next document is dated June 20, 1962. It says that it's from James Dombrowski, to the member of the executive committee of the SCEF, and it's on SCEF stationery. It says: "In re: Atlanta Conference on Civil Rights and Civil Liberties." One particular portion of it is of real significance: "The Rev. Wyatt Tee Walker of Southern Christian Leadership Conference has promised his cooperation, including the personal participation of the SCLC president, Dr. Martin Luther King, Jr. It is anticipated that a list of speakers will include at least one or two nationally prominent figures, such as Representative James Roosevelt, and Mr. Justice William O. Douglas."

The next item is a personal letter from Carl Braden, signed, "Carl," with his signature which I identify, addressed: "Dear Jim:" apparently to Dr. James Dombrowski as it was found in his correspondence files. It is dated the 27th day of July, 1963. The second page of the letter is much more significant than the first. I read some quotes from it: "The pressure that has been on Martin about O'Dell," this refers to Martin Luther King, and Hunter Pitts O'Dell who is an identified Communist Party agent, "helps to explain why he has been ducking us. I suspect there was something of this sort in the wind. The UPI has carried a story quoting Martin as saying they have dumped O'Dell for the second time, because of fear that the segregationists would use it against them. He expressed no distaste for Communists or their beliefs, merely puts it on the pragmatic basis that the Southern Christian Leadership Conference can't handle the charges of communism. This is a quite interesting development, so I feel like it is best to let Martin, and the Southern Christian Leadership Conference alone until they feel like coming around to us. They will be back when the Kennedys and assorted other opportunists with whom they are now consorting have wrung all usefulness out of them, or rather when they become a liability rather than an asset. Right now, the Red-baiters in New York are holding Martin and the SCLC as prisoners through offers of large sums of money. We shall see if they get the money, and if they do, how much of a yoke it puts upon them. Love to you and all who share your vision."

COPY

Martin's home address:

645 Johnson Ave. N.E.
Atlanta, GeorgiaMEMO TO HOWARD MURKINFROM CARL MARSH

Jan. 18, 1965

RE RE MARTIN KING

Martin King has a bad habit of arriving late at meetings and sundry affairs such as the one we are planning in NYC on Feb. 8. I have not been able to decide whether this is poor planning or an unconscious resistance to the demands on his time, or a combination of both.

In any event it is a disconcerting fact which many sponsors learn to their ^{own} ~~surprise~~ a bit late. I think we should try to forestall a repetition at our meeting. We should also guard against the possibility that he will forget the engagement all together. I therefore propose as follows:

Either you or Jim Dougherty should write him at his home, asking him to come to a dinner with you or Magalisen or some of the key people. The accompanying for this dinner should be as early as possible, say around 5 or 5:30, so as to force Martin to leave Atlanta early in the day and not wait till 8 p.m. to catch a plane. The dinner invitation to his home will serve to remind him of the engagement that night and will also pin down whether he will be there. As soon as it becomes known that he has agreed to appear at our annual reception, there is going to be great pressure on him to forget about the affair. People like Ted Kead and the CORE group are very jealous of Martin's commitment with a group like ours and we must expect efforts to divert him.

You have probably thought of all of this, but I thought I should put in my 2¢ and send this, with copy to Jim B. *Carl*

021296

SOUTHERN FARMER, INC.

MONTGOMERY, ALABAMA



TELEPHONE AM 5-7575

Feb. 26 1960

Dear Jim:

I must beg to be excused from writing anything in the way of a statement of support of Martin Luther King in this income tax case. First it would be carrying coals to New Castle. He is getting all the support he would wish for, and probably would not be too happy about our support anyway. Second, I am more and more disgusted with the way he surrounds himself with dishonest and "yes" characters. I think he has no one to blame but himself for the fact that there appears to be large discrepancies in the accounts of NIA. E.D. Nixon as you know resigned because of the looseness of the NIA and that meant King. Nixon isn't so sure there isn't a lot of truth in what they are charging about the disappearance of \$100,000. of NIA money.

So my advice is we should keep out of it.

King is playing a crafty game. He is taking his advice from National NAACP and Benny Davis. Neither of these sources have any place for SCF in their work.

Negro

I think we had better stick to Negro leaders like Nixon, Gomillion, Simpkins etc. It is hopeless to try to work with people like Davis, Clements, Seay, Abernathy, and people like these on your Dillard University faculty.

Abernathy is a fool. Yesterday he tipped off the News Papers that the students at Ala. State College were going to march on a cafeteria in the Montgomery Court House. So when the students got there the police and sheriff were there to greet them. Yet King has made this man his bosom companion all the years he has been in Montgomery.

I will have to say Jim I am pretty well fed up with the personal leadership of King. I personally have very little confidence in the mans judgement. I think Ella Baker has more sense in her little finger re: people and wise courses of action than he has in his whole body.

Sincerely yours.

Awu.



Exhibit 43. Photograph of Martin Luther King and three officers
of SCEF previously identified as Communists

At the Citizens' School, Birmingham. On
Sept. 25-28, 1962

At the City of Birmingham, Alabama. In the
presence of the Mayor, the Mayor's wife, and the Mayor's
wife. At the City of Birmingham, Alabama. In the
presence of the Mayor, the Mayor's wife, and the Mayor's
wife.

0299

Southern Conference Educational Fund, Inc.

PUBLISHERS OF The Southern PATRIOT

822 PERDIDO STREET, NEW ORLEANS 12, LOUISIANA • JACKSON 2-7224

June 20, 1962

009338

TO: Members of the Executive Committee

Dr. John R. Broes
 John M. Coe, Esq. ✓
 Mrs. Jessie F. Gusman
 Dr. Herman H. Long

Bishop Edgar A. Love
 Mrs. Modjeska Sinkins
 Benjamin E. Smith, Esq. ✓ ck

FROM: Jim Dombrowski

RE: Atlanta Conference on Civil Rights and Civil Liberties

For almost a year the staff has been discussing with various leaders in Atlanta the possibility of a Southwide conference in that city on civil rights and civil liberties. There has been a most encouraging response. Most gratifying is the interest shown by a number of organizations which in the past have not publicly associated themselves with projects in which the SCEF was involved.

that
 There appears to be excellent prospects/for such a conference could be successfully launched involving most of the leading organizations in the field in Atlanta. Eliza Paschall, director of the Atlanta Council on Human Relations has been one of the enthusiastic supporters from the first; also the Rev. Wyatt Tee Walker of SCLC has promised his co-operation, including the personal participation of the SCLC president, Dr. Martin Luther King, Jr.

It is anticipated that a list of speakers will include at least one or two nationally prominent figures, such as Rep. James Roosevelt and Mr. Justice William O. Douglas.

We have the promise of cooperation from a number of outstanding persons in Atlanta, and we are fortunate in having several capable board members there that can be counted upon to work in a local committee. Mrs. Estelle Wyckoff has pledged her support to such a committee.

Estelle has had considerable experience in organizational work of this type.

Exhibit 46. Letter showing coordination between SCEF and
 Southern Christian Leadership Conference

009337

Although we will have a capable committee on arrangements, a conference on the scale planned will need some full-time direction.

Fortunately, a competent person is available immediately, Mr. Jim Muesonic, a field secretary for SNCC who was responsible for the planning of the recent successful SNCC conference in Atlanta.

His background includes one or two years at Union Theological Seminary, a field secretary for the National Student Christian Federation. He has excellent relations with the major organizations in the city.

I would like to have your authorization to employ Mr. Muesonic, or other competent person, at a salary of \$300 per month to work full-time on the conference. Tentatively the conference will be held about the middle of November, or soon after the election as appears feasible.

☒ I do, ☐ do not, approve of the employment of a full-time person at \$300 per month to work on the Atlanta Conference on Civil Rights and Civil Liberties for a period of approximately four months.

Signed

Date

Paul Smith
6/21/67

7/27/68

Dear Jim:

I am sending this special delivery to your home because Anna said you might be conferring with John Salter this week end. I definitely think you should have a long talk with him before employing him. He should understand our aims and methods.

It is my thought that John is the ideal person for the Louisiana-Mississippi-Arkansas-West Texas area, as outlined in our division of labor at the June staff conference. He is young and tough enough to do what needs to be done.

It is my idea that he should work that area and be based in New Orleans. If Clarence or Ruth Holmes or somebody else goes to work, they can take the Virginia-Carolinas-Florida-lower West Virginia sector. Leaving Ky-Tenn.-Ala.-upper N.Va. for us, as outlined.

The eastern ~~sector is the easiest to work. Some part of the central sector is as tough as the western.~~
sector is the easiest to work. Some part of the central sector ^{is} as tough as the western.

I think John should be called a field organizer; that we should issue a news release in September about his and Anna's going to work for us--as well as about anybody else you employ. The release should also have something about our program as outlined in H.O. in June.

I believe that SCLC has a great opportunity to be of service in Mississippi, considering our long association and record of service in that state--to say nothing of the valuable contacts. John Salter will certainly add to the latter.

(Next page is another matter of import)

Exhibit 47. Letters discussing technique of influence used on

Martin Luther King

-3-

Attached is a letter from Bettie Miller regarding the witch hunt in Georgia and environs. Thought you should be alerted to it, if you are not already.

The pressure that has been on Martin about O'Dell helps to explain why he has been ~~ducking~~ ducking us. I suspected there was something of this sort in the wind.

The UPI has carried a story quoting Martin as saying they have dumped O'Dell for the second time because of fear that the segregationists would use it against them. He expressed no distaste for Communists or their beliefs, merely puts it on the pragmatic basis that SCIC can't handle the charges of Communism. This is a quite interesting development.

S. I think it is best to let Martin and SCIC alone until they feel like coming around to us. They'll be back when the Kennedys and assorted other ~~opportunists~~ opportunists with whom they are now consorting have wrung all usefulness out of them--or rather when they become a liability rather than an asset. Right now the Red-baiters in New York are holding Martin and SCIC as prisoners through offers of large sums of money. We shall see if they get the money and, if they do, how much of a yoke it puts upon them.

Love to you and Ellen

Carl

Mr. PEREZ. And the other which is a Communist booklet on the American Negro problem setting out that the struggle against white oppression of the Negro masses is a part of the proletarian revolution in American against capitalism, by John Pepper, Joseph Pogany, John Schwartz, John Swift, and various aliases. This character Pogany was an agent of the Comintern who was sent to the United States to effect the organization of the Communist Party USA in 1922.

I offer that as exhibit 8 Perez, Louisiana.

(The document referred to was marked Exhibit No. 8 Perez, Louisiana, and is as follows:)

In September 1919, a convention was held at Chicago from which two Communist organizations emerged: The Communist Labor Party and the Communist Party. Each group sent delegates to the Comintern, and each agreed to be bound by the conditions for admission, but there was still no recognition from Moscow. Meanwhile two agents had arrived from Russia, Joseph Pogany and Ludwig Martens, equipped with the authority of the Comintern and plenty of funds. Through their joint efforts a merger was finally effected in 1922 between the two dissident American groups, and the first front organization was also formed in that year, the American Friends of Soviet Russia.

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Foreword

THE COMMUNIST FIGHT FOR THE NEGRO CAUSE

The two major capitalist parties, the Republican and Democratic, and their small brother, the Socialist Party, have an unwritten "gentleman's agreement" on the Negro question. According to this sacred "gentleman's agreement," which no capitalist politician has dared to violate in the present election campaign, there is no Negro question in the United States, there are no problems of social and political equality, no questions of discrimination against the Negro masses. During the whole course of the election campaign there has been only one political party which has had the courage to violate this "gentleman's agreement" to keep a deathly silence on the Negro question. The Workers (Communist) Party of America has come out in its election platform and in its whole election struggle as the fearless champion of the Negro masses.

The southern states are stirred up by the political struggle of the communist speakers and organizers for the Negro masses. Communist anti-lynching leaflets are being distributed everywhere.

The candidates of the Communist Party are everywhere putting up a courageous fight for the full social and political equality of the Negro race.

The meetings of the Communist Party have been broken up in Arizona, in Texas, in Delaware, and in other southern states, because the communist spokesmen dared to tackle the Negro question and were bold enough to call the Negro workers to their meetings.

The Ku Klux Klan, the American Legion, the forces of police and other organs of governmental terrorism are mobilized everywhere against the communists, because the Communist Party is the only party of the working class and of the oppressed Negro masses.

One, if not the most outstanding, feature of the election campaign of 1928 is the fact that communist speakers, organizers, and candidates for President, Vice-President, and Governor are being jailed everywhere because of their uncompromising struggle for the Negroes.

To this brief foreword to the following essay on some of the basic Negro problems in America, we wish to add the principal demands for the oppressed Negro masses as embodied in the Platform of the Workers (Communist) Party of America:

1. Abolition of the whole system of race discrimination. Full racial, political, and social equality for the Negro race.

2. Abolition of all laws which result in segregation of Negroes. Abolition of all Jim Crow laws. The law shall forbid all discrimination against Negroes in selling or renting houses.

3. Abolition of all laws which disfranchise the Negroes.

4. Abolition of laws forbidding intermarriage of persons of different races.

5. Abolition of all laws and public administration measures which prohibit, or in practice prevent, Negro children or youth from attending general public schools or universities.

6. Full and equal admittance of Negroes to all railway station waiting rooms, restaurants, hotels, and theatres.

7. Federal law against lynching and the protection of the Negro masses in their right of self-defense.

8. Abolition of discriminatory practices in courts against Negroes. No discrimination in jury service.

9. Abolition of the convict lease system and of the chain-gang.

10. Abolition of all Jim Crow distinction in the army, navy, and civil service.

11. Immediate removal of all restrictions in all trade unions against the membership of Negro workers.

12. Equal opportunity for employment, wages, hours, and working conditions for Negro and white workers. Equal pay for equal work for Negro and white workers.

J. P.

American Negro Problems

By JOHN PEPPER

The Negro question in America must be treated in its relation to the liberation struggle of the proletariat against American imperialism. *The struggle against white oppression of the Negro masses is a part of the proletarian revolution in America against capitalism.* The American working class cannot free itself from capitalist exploitation without freeing the Negro race from white oppression. What Marx said about the United States is still true: "Labor cannot emancipate itself in the white skin where in the black it is branded."

At the same time the Negro question in the United States of America must be treated in its relations to the huge Negro masses of farmers and workers oppressed and exploited by white imperialism in Africa and South America. The Negroes of the United States are the most advanced section of the Negro population of the world and can play a decisive role in helping and leading the liberation movement of the Negro colonies. Within the Negro population of the United States, the *Negro working class* is destined to be the vanguard of all liberation movements and may become the vanguard of the liberation movement of the Negro peasant masses on an international scale.

A NEGRO PROLETARIAT APPEARS

The industrialization of the agrarian south of the United States, the concentration of a new Negro working-class population in the big cities of the east and north, and the entrance of the Negroes into the basic industries on a mass scale, have been changing, in the last few years, the whole social composition of the Negro race in America. *The appearance of a genuine Negro industrial proletariat creates an organizing force for the Negro race, furnishes a new working-class leadership to all Negro race movements, creates the possibility for the Negro workers under the leadership of the Com-*

munist Party to assume the hegemony of the Negro liberation movement, strengthens immensely the fighting possibilities for the emancipation of the Negro race and increases the importance of the Negro question for the revolutionary struggle of the American proletariat.

American imperialism oppresses in the most terrific way the nearly 11 million Negroes who constitute not less than one-tenth of the country's total population. White capitalist prejudice considers the Negro race a "lower race," the born servants of the lofty white masters. *The racial caste system is a fundamental feature of the social, industrial and political organization of the United States.*

The Workers (Communist) Party of America, in its fight against imperialism, must recognize clearly the tremendous revolutionary possibilities of the liberation movement of the Negro people. Today the "solid south," the millions of Negro farmers of the "black belt," living under the most oppressive conditions, "half-feudal, half-slave" (Lenin) constitute one of the props of American imperialism. It is the basic duty of the Communist Party to develop all revolutionary possibilities of the Negro race, to transform the "solid south" and the "black belt" from "reserves of forces for the bourgeoisie into reserves of forces for the proletariat" (Stalin). *The Communist Party must consider itself not only the Party of the working class generally, but also the champion of the Negroes as an oppressed race and especially the organizer of the Negro working-class elements.* The Communist Party cannot be a real Bolshevik Party without being also the Party of the liberation of the Negro race from all white oppression.

THE SOLID SOUTH—AN AMERICAN COLONY

The Negro tenant farmers, share-croppers, and agricultural workers of the south are still, despite all the pompous phrases of "freeing the slaves," in the status of virtual slavery. They have not the slightest prospect of ever acquiring possession of the land on which they work. By means of a usurious credit system they are chained to the plantation owners as firmly as plantation slaves. Peonage and contract labor are the fate of the Negro cotton farmers. The bankers of the east and the south are increasingly becoming the landowners. The landowners, who are at the same time the merchants, having a monopoly of marketing the crops of the Negro

tenant farmers, and of the *government* in the south, rule over the Negroes with a merciless dictatorship.

The most backward half-feudal, half-slave methods of exploitation by the plantation owners, are merged in the south with the most modern forms of capitalist exploitation by the huge trusts and banks of financial capital. No other section of the American toiling masses feels the ruthless capitalist dictatorship of the much-vaunted American bourgeois democracy more than the oppressed Negro masses. The Negroes of the south are disfranchised politically. Sheer force prevents the Negroes from exercising their so-called political rights. Lynch law is the law over the Negroes. The terror of the Ku Klux Klan is the constitution for the Negroes. Most infamous segregation policies prevail everywhere against them. The white masters try to reduce the Negroes to illiteracy.

The "black belt" of the south, with its starving and pauperized Negro farmers, and Negro agricultural working masses; with its Jim-Crowism, its semi-feudal status and its political system still bearing the earmarks of the period of slavery, *constitutes virtually a colony within the body of the United States of America.* The super-profits extracted from this Negro "colony" are one of the most important sources of the growth of American imperialism; the oppression of the Negro race is one of the most important bases of the government apparatus of American capitalism. The prejudices created in the minds of large sections of the white workers against the Negroes are the most dangerous obstacles to the unity of the American working class.

CLASS DIFFERENTIATION OF THE NEGROES

A sharp class differentiation has taken place in the Negro population in recent years. Formerly the Negro was in the main the cotton farmer in the south and the domestic help in the north. The peasantry (the Negro farm owners, the share-croppers, the Negro tenant farmers) and the agricultural workers are still the largest stratum of the Negro race. Out of eight million Negroes in the south, there are six million still on the land. In the big cities and industrial centres of the north there is concentrated to a growing degree a Negro working-class population. There are already one and one-half to two million Negroes in industry in the north. At the same time there is a rapid development of a Negro petit-bour-

geoisie, a Negro intelligentsia and even a *Negro bourgeoisie*. The very fact of segregation of the Negro masses creates the basis for the development of a stratum of small merchants, lawyers, physicians, preachers, brokers, who try to attract the Negro workers and farmers as consumers. There is no Negro *industrial bourgeoisie*. Predominance of white trusts restricts the young and weak Negro bourgeoisie to the fields of trade and second-rate banking.

It would be a major mistake to overlook the existence of class differences among the Negroes, especially the crystallization of a Negro bourgeoisie. There were in 1924, 73 Negro banks, carrying an annual volume of business of over 100,000,000 dollars. There are 25 Negro insurance companies; 14 of these have assets totalling 6,000,000 dollars and during 1926 alone paid over 3,000,000 dollars in claims. *This Negro bourgeoisie is closely tied up with the white bourgeoisie; is often the agent of the white capitalists.* Economically the Negro banks are often part of the Federal Reserve System of banking.

Politically the Negro bourgeoisie is participating, to a growing degree, in the so-called "commissions for inter-racial cooperation." These committees exist in eight hundred counties of the south and are spreading all through the "black belt." But the ideological and organizational bearer of the national racial movement of the Negroes is today rather the intelligentsia and petit-bourgeoisie.

PROLETARIANIZATION AND PAUPERIZATION OF THE FARMER

There is a growing process of disintegration going on among the Negro farmers. Ever larger sections are transformed into agricultural workers (2,000,000) and hundreds of thousands of Negro farmers and agricultural workers desert their lands and migrate to the big cities and industrial centres. This migration is not only to the industrial centres and big cities of the east and north, but also to the rising industrial centres of the south. There is even migration from the plantations to the villages of the south where there is a non-agrarian Negro population of about two millions.

Lenin pointed out back in 1913, as one of the foremost characteristics of the southern rural areas, the fact that "*its population is deserting it.*" The disintegration of the Negro peasantry means

partly *proletarianization* of the Negro share-croppers,¹ partly *pauperization* of the Negro masses. In the past the south has had a stratum of "poor whites," today it is developing a new stratum of "poor blacks"—driven completely outside the process of production.

The southern plantation owners and their government have tried to hold the Negro farmers and agricultural workers in the southern cotton fields by force, but even their brutal terror has not been able to stop the mighty migration from the cotton plantations to the industrial centres. *This migration is an "unarmed Spartacist uprising" against slavery and oppression by a capitalist and feudal oligarchy.* The Negro has fled from the south, but what has he found in the north? He has found in the company towns and industrial centres of the north and east a wage slavery virtually not better than the contract slavery in the south. He has found crowded, unsanitary slums. He has exchanged the old segregation for a new segregation in the worst sections of the cities. He is doing the most dangerous, worst-paid, unskilled work in the steel, coal and packing industries. *He has found the racial prejudice of a narrow white labor aristocracy* which refuses to recognize the unskilled Negro worker as its equal. He has found the treachery of the bureaucracy of the A. F. of L., which refuses to organize the Negro workers into trade unions; he has found betrayal by the renegade Socialist Party which capitulated completely to white chauvinism. The lynchings of the south have their counterpart in the race riots of the east. The employing class deliberately arouses the racial hatred and prejudices of the white workers against the Negro workers with the sinister aim of splitting and dividing the ranks of the working class, thereby maintaining the exploitation and oppression of both the white and Negro workers.

¹"A cropper is a tenant who works the land for his landlord without supplying any of the working capital, but he might almost as well be regarded as a laborer who accepts a share of the crop as his wages. . . . The payment for their services in the form of a share of production rather than in the form of a stated weekly or a monthly wage is the part of a plan whereby the landlord is able to insure himself of their continued services throughout the season. . . . In other words, while tenancy in theory represents merely a method of holding possession of the land, in practice it sometimes works out into a method of obtaining laborers to work on the land." Goldweiser and Truesdell, *"Farm Tenancy in the United States."* Census Monographs IV. Washington, 1927).

THE SLOGAN OF SELF-DETERMINATION

The Workers (Communist) Party of America puts forward correctly as its central slogan: *Abolition of the whole system of race discrimination. Full racial, social and political equality for the Negro people.* But it is necessary to supplement the struggle for the full racial, social and political equality of the Negroes with a struggle for their right of national self-determination. Self-determination means the right to establish their own state, to erect their own government, if they choose to do so. *In the economic and social conditions and class relations of the Negro people there are increasing forces which serve as a basis for the development of a Negro nation (a compact mass of farmers on a contiguous territory, semi-feudal conditions, complete segregation, common traditions of slavery, the development of distinct classes and economic ties, etc., etc.).* It is true, the Negro people in the United States have not their own language as distinct from the language of the oppressing white nation; but there is a certain amount of special Negro culture; there is still alive the common, deep-rooted tradition of the bitter centuries of slavery; there is developing a new Negro literature and press.

First of all, we must consider the compact Negro farming masses of the "black belt" as the potential basis for a national liberation movement of the Negroes and as the basis for the realization of the right of self-determination of a Negro state. Despite growing migration to the north, in 1920 there were still over 3,000,000 Negroes who constituted a majority of the population in 219 counties over a contiguous area in the "black belt." There are many national movements of the Negro city petit-bourgeoisie and intelligentsia. The fact that the most important mass movement of this kind, the Garvey movement, was a sort of Negro Zionism and had such reactionary, extremely harmful slogans as leaving the United States and back to Africa, should not blind us to the revolutionary possibilities of the Negro national liberation movements of the future. It is unquestionable that first of all the Negro farmers can be the basis of a Negro national liberation movement of the future, despite the fact that today the Negro farming masses of the south are so oppressed that they do not yet show any signs of national awakening.

The Negro national liberation movement has tremendous revolutionary potentialities, despite the fact that at the outset its bearer will likely be the rural and urban petit-bourgeoisie. Lenin has stated: "There can be no doubt that all nationalist movements cannot be but bourgeois-democratic movements." But the knowledge of this fact did not prevent Lenin and the C. I. from recognizing the tremendous unexhausted revolutionary possibilities of the national liberation movement of the colonies and oppressed nations and races generally. As the national liberation movement grows, the Negro proletariat will play an increasing role in it and will struggle for the hegemony over it. There is a certain amount of assimilation going on among the Negro industrial workers in the north and east. The Negro worker works shoulder to shoulder with the white worker in the factories and plants, but at the same time it is necessary to recognize that there is practically no social contact between these workers. The social and residential segregation of the Negro workers in the north is complete and manifests an increasing tendency. Veritable Negro cities are being created in Harlem, New York, and on the south side of Chicago. This segregation of the Negro working class creates an economic basis for the development of a Negro petit-bourgeoisie even in the north and east, which loads additional exploitation onto the backs of the Negro workers and as a result of this distinct development, strengthens the basis of the Negro national movement in the north and east.

The Workers (Communist) Party of America must come out openly and unreservedly for the right of national self-determination for the Negroes, but at the same time the Communist Party must state sharply that the realization of this self-determination cannot be secured under the present relations of power under capitalism. National self-determination for the Negro is a bourgeois-democratic demand but it can be realized only in the course of the proletarian revolution. The abolition of the half-feudal, half-slave remnants in the south will also be only "a by-product" (Lenin) of the general proletarian revolution. It would be a major mistake to believe that there can be any other revolution in imperialist America, in the country of the most powerful, most centralized and concentrated industry, than a proletarian revolution.

The Communist Party of America must recognize the right of national self-determination for the Negroes and must respect their own decision about the form of the realization of this self-determination. The *Negro Communists* should emphasize in their propaganda *the establishment of a Negro Soviet Republic.*

AGAINST WHITE CHAUVINISM

Not only the labor aristocracy but large sections of the American working class as a whole are permeated with *white chauvinism*. White chauvinism reflects itself in various forms even in some sections of the Communist Party itself. Individual comrades and even some local organizations have yielded occasionally to the racial prejudices of the white workers and retreated, instead of waging a courageous struggle against it. (Gary, Detroit, St. Paul, Harlem). The C. E. C. of the Communist Party of America stated in its resolution of April 30th that "the Party as a whole has not sufficiently realized the significance of work among the Negroes and that such work should be considered not as a special task of the Negro comrades, but as one of the special revolutionary tasks of every communist, of the whole Party."

It is imperative to begin outside and inside the Communist Party a relentless campaign of self-criticism concerning the work among Negroes. All signs of white chauvinism must be ruthlessly uprooted from within the ranks of the Communist Party. In this aggressive fight against white chauvinism, the Party must carry on a widespread and thorough educational campaign within the Party, utilizing for this purpose to the fullest possible extent, the Party schools, the Party press and the public platform to stamp out all forms of antagonism or even indifference among our white comrades towards the Negro work. This educational work should be conducted simultaneously with broad campaigns to draw the white workers and the poor white farmers into the struggle for the support of the demands of the Negro workers and tenant farmers.

The struggle against white chauvinism must be combined with the struggle for genuine internationalism in the ranks of the working class and in the ranks of the Communist Party. The Communist Party of America must emphasize in all its campaigns the solidarity of the white and black workers. In the ranks of the

Communist Party there can be no place for nationalism. The Communist Party must be the Party of internationalism.

TASKS OF THE COMMUNISTS IN NEGRO WORK

The appearance of a Negro industrial proletariat on a growing national mass scale makes it imperative that the main emphasis of the Party work should be placed on these new proletarian forces. The Negro workers must be organized under the leadership of the Communist Party and drawn into joint struggle, together with the white workers. The Party must understand how to link up all racial, national demands of the Negroes with the economic and political struggles of the workers and poor farmers. Much more emphasis than before must be laid on the trade-union organization of the Negroes. The Party must penetrate all existing Negro trade unions. It is a basic task of the Communist Party to organize the Negroes into trade unions. In all the work of organizing the unorganized carried on under the leadership of the Communist Party, we must insist upon the inclusion of Negro workers with white workers in the newly organized trade unions. In the existing trade unions, the Party must fight for the admittance of Negro workers. Where the labor bureaucracy refuses to admit Negroes, it is the duty of the Communist Party to organize Negro trade unions. At the same time the principle of one union for each industry, embracing white as well as Negro workers, should be the aim of the Communist Party.

The importance of trade-union work imposes special tasks upon the T. U. E. L. The T. U. E. L. has neglected the work among the Negroes, notwithstanding the fact that these workers are objectively in a position to play a very big part in carrying through the programme of organizing the unorganized. Greater contact must be established between the T. U. E. L. and the Negro masses. The T. U. E. L. must become the champion of the rights of the Negroes in the old unions and in the organizing of new unions for both Negroes and whites, as well as separate Negro unions.

It is one of the biggest tasks of the Workers Party to extend its activities to the "Solid South," the beginning of which has been made in the election campaign. The Party was not able to carry on any work among the Negro farmers and agricultural workers of

the "black belt." It is the duty of the Party to study and analyze the conditions of the Negro farming masses, to work out demands to meet their situation, *to organize special Negro farmers' organizations as well as organizations of the agricultural workers.* It is necessary that the Party should establish new district organizations in the south, especially in the most important industrial centres. The Party organizations in these industrial centers of the south should be the bearers of the educational and organizing work of the Party among the Negro farmers and agricultural workers.

The fight against segregation, lynching, and political disfranchisement of the Negroes, must be organized. *It is necessary to help the Negro masses to organize themselves for active resistance and self-defense against the lynching terror of the Ku Klux Klan and similar terroristic gangs of the white bourgeoisie.* The I. L. D. which so far has almost completely neglected work amongst the Negro masses, must hereafter put in the forefront of its propaganda, agitation and activities, energetic campaigns against lynching and juridical oppression of the Negroes.

The communists must participate in all national liberation movements of the Negroes which have a real mass character. The existing national organizations and movements of the Negroes are today under the domination of the Negro petit-bourgeoisie and even their bourgeoisie. *The aim of the Communist Party must be to fight for the hegemony of the working-class elements in the national liberation movement.* The basic task of the communists is to form working-class organizations for the Negro proletariat and agricultural workers, and farmers' organizations for the Negro farmers and to turn these organizations into energetic integral forces of the whole class struggle. The communists must not forget for a moment that *the struggle for the national liberation of the Negroes includes the relentless struggle against the Negro bourgeoisie and the struggle against the influence of the petit-bourgeoisie over the Negro proletariat.* It is permissible to form a united front (for example in the form of a Negro Race Congress) of the working-class elements with the petit-bourgeois elements. The policy of the communists within this united front must be:

(a) To free the working class from the ideological and organizational influence of the petit-bourgeois elements.

(b) To begin the struggle for the leadership of the working class.

The communists must bear in mind that the alliance of the Negro working class with the Negro petit-bourgeoisie can be maintained only under the following conditions:

(a) A revolutionary fight of the petit-bourgeoisie for Negro race demands against American imperialism.

(b) No obstacles by the petit-bourgeoisie against the special class demands and organizations of the Negro workers and exploited farmers.

The communists must under no circumstances merge their organization with the petit-bourgeois organizations and must reserve for themselves fullest rights of criticism and propaganda.

The American Negro Labor Congress which is still very weak, must be reorganized and activated. The communists working within this organization should try to make it serve as an *intermediary mass organization, as a medium through which the Party can extend its work among the Negro masses and mobilize the Negro workers under its leadership.* After careful preparatory work which must be started at once, another convention of the American Negro Labor Congress should be held. For this convention a carefully worked-out program should be prepared. It should contain not only demands of the Negro workers, but also the agrarian demands of the farmers and agricultural workers.

The Negro miners' relief committee and the Harlem Tenants League are examples of united front organizations which may be set up as a means of drawing the Negro masses into struggle. But these organizations can be considered only as a beginning. The communists working within these organizations should try to broaden them, and similar committees should be organized in other Negro centers. In every case the utmost effort must be made to combine the struggle of the Negro workers with that of white workers and to draw the white workers' organizations into such united-front campaigns.

One of the greatest shortcomings of the work of the American Party among the Negroes is the lack of sufficient Party cadres among the Negro comrades. The next and most important task of the Party in this respect is the selection and education of a cadre of Negro communist workers. The proletarian character of the Negro Party leadership must be brought forward more clearly than before. At the same time the proletarian Negro intellectuals must be utilized

to the full. It is imperative to utilize all Party schools in the U. S. A. and abroad to train Negro comrades as leaders and for special work among the Negro farming masses.

The activities of the Negro comrades should not be confined exclusively to the work among the Negroes, but they should participate in the general Party work. Simultaneously white comrades must be specially trained for work among the Negroes. The Negro Champion must be published regularly. Every effort must be made to develop it into the mass organ of the Negro workers and working farmers. The general Party press must be utilized to its full extent for propaganda among the Negroes. A regular Negro news service must be built. The utmost effort must be made to attract Negro workers and Negro agricultural laborers as members into the Communist Party. The present Negro membership of the Communist Party is inadequate to fulfill the great tasks before it. A special recruiting campaign for Negro workers should be initiated in connection with the general economic and political campaigns of the Party. In the present election campaign, wherever possible Negro communist candidates should be nominated in the important Negro centers.

The Negro question in the United States must be treated in its relation to the general international Negro problem. The question of a Negro World Congress should be considered but it can be realized only if a Negro working-class leadership in the Congress can be secured. One aim and purpose of the work among the Negroes in the U. S. A. should be to organize them as the champions of the Negroes all over the world, against imperialism. A strong Negro movement in the U. S. A. will be able to influence and direct the Negro movement in all those backward parts of the world where the Negroes are oppressed by the various imperialist powers.

(At this point in the proceedings, Senator Hruska entered the hearing room.)

Mr. PEREZ. Mr. Chairman, this morning I pointed out certain provisions of the Senate bill 1564 labeled to enforce the 15th amendment to the Constitution of the United States to be known as the Voting Rights Act of 1965, and I pointed out that any person could make complaint against an election which would hold up the certification of the election until the matter might be processed through the Federal court. That is section 9(e) on page 9; and section 9(f) on page 10 provides that such a suit should be tried by the District Court of the United States; and then section 11(b) on page 11 provides that no court other than the District Court for the District of Columbia shall have jurisdiction.

I pointed out this morning that this provision evidently was aimed to appease and satisfy the Freedom Party of Mississippi, and I want to make a further comment to show the unconstitutionality and the danger of that provision.

(At this point in the proceedings, Senator Tydings entered the hearing room.)

Mr. PEREZ. Next year the Senators from Georgia, Alabama, Mississippi, Louisiana, and South Carolina will be up for reelection. Any person could prevent the certification of the election of any of those Senators and hold it up indefinitely until the three-judge court in Washington, D.C., and then appeal to the U.S. Supreme Court to finally decide the validity of such a complaint. The complaint does not even have to allege that his vote or any vote would change the result of the election.

But I want to point out that under article I, section 3 of the U.S. Constitution each State is guaranteed two Senators in the U.S. Senate.

Section 4, article I provides "Times, places, and manner of holding election for Senators and Representatives shall be prescribed in each State by the legislature thereof," not by the Congress, not by a three-judge Federal court in Washington, D.C.

And then again I want to point out section 5 of the same article I which provides, "Each house shall be the judge of the election returns and qualifications of its own members."

The point is that—

The CHAIRMAN. The point is that it is depriving Congress.

Mr. PEREZ. Yes, sir, that is what I am coming to.

The CHAIRMAN. All right, sir.

Mr. PEREZ. This provision of the act is strictly unconstitutional. No one can argue against that because it would take away from Congress its constitutional authority to be the judge of the elections and qualifications of its own members. It could deprive States of representation in the U.S. Senate in spite of the guarantee that the Senate of the United States shall be composed of two Senators from each State.

And of course we can foresee how things of that character could be held up for a year or longer; during such time the State could be deprived of representation in the Senate.

The CHAIRMAN. That is true of the House of Representatives, too, also, is it not?

Mr. PEREZ. It would apply of course equally to the House of Representatives which is entitled to its representation. And the House the same as the Senate shall be the judge of the election returns and qualifications of its own Members. But this provision in the so-called voter rights bill would take that authority away from both the House and the Senate and be a violation, of course, of those provisions of the Constitution.

Now then, this morning, Mr. Chairman, in my analysis of the bill, I pointed out various provisions and how the States' laws would be nullified, in spite of the guarantees of the U.S. Constitution. I want to make a comparison which is really shocking. I submit that a comparison of the progressive present day unconstitutional use of patience by the Federal Government under the baneful political influence of these subversive fronts accompanied by their mass actions, demonstrations, boycotts—I want to compare the action of the Federal Government with the indictments found in the Declaration of Independence against the tyranny of the British crown at the time, which will show to what extent constitutional government has deteriorated in this country.

Let us witness a long train of abuse and usurpations nullifying our State laws that are most wholesome and necessary for the public good, the dissolution of our legislatures by the Supreme Court, promoting invasion of our States from without, inciting insurrections, and creating convulsions within. No one can deny that. These words are taken out of the Declaration of Independence and apply today.

Obstructing the administration of justice against treason and anarchy, and all of these mass action demonstrators protected by the highest court of the land, sending swarms of Federal marshals and quartering bodies of armed troops among us to harass our people without the consent of our legislature, making the military superior to the civil power, abolishing the forms and peaceful way of life to which they are accustomed and altering fundamentally the forms of our Government:

Depriving us and our State officials in many case of the benefits of trial by jury, especially in prosecutions that are purported injunctions, and again threatening to subject us to a jurisdiction foreign to our Constitution and unacknowledged by our laws, in the words of the Declaration of Independence, by a provision in this very bill, Senate 1564, that no act of our legislature prescribing voter qualifications hereafter for electors of the most numerous branch of the State legislature guaranteed and recognized by article I, section 2; article 3, section 1 of the 17th amendment of the U.S. Constitution.

No such law shall have effect unless approved by the three-judge U.S. District Court for the District of Columbia.

Compare this statement of the aggression against our State governments, the usurpations, the deterioration of constitutional government under the urge and influence of subversive groups with the same pronouncements and specifics against the tyrannical British crown in 1776, and you will see the similarity.

So we appeal as decent citizens and loyal, patriotic Americans devoted to the preservation of constitutional government to stop, look, and please listen.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Ervin.

Senator ERVIN. Judge, you are familiar with the provision of the bill which provides that the States or the localities covered by this bill cannot change their local laws and make the changes effective until they are approved by a three-judge court in the District of Columbia, are you not?

Mr. PEREZ. Yes, sir, I just mentioned that.

(At this point in the proceedings, Senator Scott entered the hearing room.)

Senator ERVIN. Is that not a complete reversal of the fundamental principle of our law that every act of a State legislature is presumed to be constitutional until it is clearly shown to be otherwise?

Mr. PEREZ. Absolutely.

Senator ERVIN. Judge, if Congress can pass a law to prevent an act of the State legislature with reference to voting from being effective until it is approved by a three-man judge court in the District of Columbia, does it follow that the Congress has the same power to pass a law that the State legislature cannot pass a law on any other subject?

Mr. PEREZ. Yes, sir.

Senator ERVIN. Under the three-judge court.

Mr. PEREZ. And that is the unnatural power which was exercised by the tyrannical British Crown against which our Founding Fathers rebelled, sir, as set out in the Declaration of Independence, and the same thing is going on now in this very Congress.

Senator ERVIN. Judge, I would like to ask you if this bill does not ignore the fact that the U.S. Constitution reserves to the several States the right to establish their own voting laws?

Mr. PEREZ. It does.

Senator ERVIN. I will ask you if it does not ignore the fact that there are already laws on the books under which discrimination in voting may be eliminated through the courts.

Mr. PEREZ. Oh, yes, sir, of course; several laws.

Senator ERVIN. I will ask you if the excuse given for the passage of these laws is this: Namely, if we are going to have the rights of adjudication in the courts it requires some time and some delay? Is not the outcry against the delay the identical reason which mobs give for lynching people?

Mr. PEREZ. That is true, sir. It is strictly unlawful, but it shows, it simply shows that impatience on the part of the Executive greedy for more power to bypass our judicial system and to nullify the constitutional protections.

Senator ERVIN. Do you not believe that the Congress should pass legislation which applies to the whole country rather than picking out certain sections to deal with, legislating?

Mr. PEREZ. Of course. Every honest mind rebels against so-called discrimination, and this is the vilest sort of discrimination against a free people.

The CHAIRMAN. Sectional legislation is always suspect.

Mr. PEREZ. Naturally and probably so.

Senator ERVIN. I would like to ask you if the decisions are to the effect that any legislation which does not apply to all alike under like circumstances is an offense against the due process laws.

Mr. PEREZ. Yes, sir. It is class legislation, and I want to point out something in that connection, sir. There is no provision in this bill for due process in violation of the 5th amendment. Due process is provided for in the 5th amendment. Where is there a single word here? There was a hoax in one provision where it says you will give anyone 10 days within which to challenge any person listed on the Federal examiner's listing. In another part of the same bill it says the listings will not be filed until 30 days later.

Where is the due process?

Senator ERVIN. Do you not believe that it makes a mockery of the judicial process to have a bill which says that people have to travel a thousand miles before they can get to a court that can even pretend to have jurisdiction?

Mr. PEREZ. That is what your Founding Fathers rebelled against, the tyrannical crown, about foreign courts, and this really is a foreign court because under all judicial process, why the courts that have jurisdiction over the domicile of the defendant is the court to try and hear the issues of any case.

Senator ERVIN. Do you not agree that this bill would be more forthright and entitled to more respect if it just contained a declaration that any State that had a literacy test that lay south of the Mason-Dixon Line would be presumed to be practicing discrimination, whether it was or not?

Mr. PEREZ. Oh, yes, but then the great State of Texas might be included in that. That would be lese majeste, I would say.

Senator ERVIN. The State of Texas does not have a literacy test.

Mr. PEREZ. And the poll tax, which was considered most adomiable and abolished by a constitutional amendment, but literacy tests were never abolished by any constitutional amendment. It is recognized consistently in our jurisprudence under the provisions of the Constitution, section—article I, section 2, and the 17th amendment particularly.

Senator ERVIN. I would call your attention to the fact that this bill raises the presumption that a State or a political subdivision of a State is violating the 15th amendment if less than 50 percent of its people vote in an election, provided the State has a literacy test.

Mr. PEREZ. Why, of course, there is no excuse for that. No one would try to offer a logical explanation of such an arbitrary position. It is strictly arbitrary without reason, logic, or basis in law. But it assumes a judicial function in Congress which Congress does not have. It deprives due process without a hearing.

As I said this morning, I can explain why possibly in my parish in the State of Louisiana it might have been a little less than 50 percent of the total number of adults who voted, although we had, I think, about 69 percent registration. People were allergic to one party and people were most allergic to the candidates of another party. A lot of people stayed home.

Now the State is to be penalized for that and to be considered a conquered territory or province.

Senator ERVIN. Can you tell me the legal reasoning which says that Louisiana is to be presumed to be guilty of violating the 15th amendment because only 47.3 percent of its people of the age of 21 and up voted last year, whereas the State of Texas is to be presumed

not to be violating the 15th amendment because 44.4 percent of its people of the age of 21 and upward did not vote?

Mr. PEREZ. Well, I think only the strongest words condemn that type of discrimination. It is unfair and strictly dishonest, strictly dishonest. No one can defend it.

Senator ERVIN. Is there any logic to a bill which says that Louisiana is to be assumed in violation of law because 47.3 percent of its people voted whereas Texas is not to be presumed in violation of the same law because only 44.4 percent of its people voted?

Mr. PEREZ. Of course not.

Senator ERVIN. And yet that is the bedrock assumption upon which 6 States and 34 counties in my State would be deprived of their constitutional rights to have and apply a literacy test.

Mr. PEREZ. I do not think it needs explanation as to the reason why this piece of punitive legislation is being enacted as a force bill. Those States did not vote for the successful candidate. Now then, we are to be punished for that because we have exercised our right and freedom of choice.

The CHAIRMAN. Where is justice to deprive Louisiana of a literacy test and let New York State impose a literacy test?

Mr. PEREZ. That is correct, sir. I think New York has an eighth-grade literacy test, which is higher than the Louisiana literacy test.

Senator ERVIN. And what rhyme or reason can be given for depriving 34 North Carolina counties of part of their rights under the Constitution because less than 50 percent of their adult population voted, whereas 138 counties in the State of Texas, who are in exactly the same situation, are not to be deprived of the same portion of their—

Mr. PEREZ. No more, sir, than to bring my parish in the State of Louisiana under the same nefarious formula because we have about a 67 or 69 percent registration, and I think we fell 1 or 2 percent under 50 percent of those who voted, although we have just emerged from litigation with the Department of Justice and we beat them. They alleged discrimination. They alleged coercion. They fabricated figures in their brief falsely.

We pointed out, and the court held with us, that they were false figures, dishonest figures. Their own statistics were disproven. I have not heard anybody apologize to us about it. I think we are due an apology, but we are hung, we are hooked under this type legislation.

Senator ERVIN. Judge, under the laws of the States which have literacy tests, the test is administered to applicants for registration prior to their registration; is it not?

Mr. PEREZ. Yes, sir.

(At this point in the proceedings, Senator Dirksen entered the hearing room.)

Senator ERVIN. And so, if there is any discrimination in administering the test, it necessarily has to occur before the voters register.

(At this point in the proceedings, Senator Hart left the hearing room.)

Mr. PEREZ. Let me make this statement, please. As I pointed out how it is unconstitutional, how, from a practical standpoint, any person complaining about any Senator's or any Congressman's election could stop certification of his election. This same provision could paralyze and bring to a stop our legislative process in the State because there is

no provision in our law for members of the legislature, just as there is no provision in the Constitution for Members of Congress to hold office until their successors are elected and qualified. And any person, an alien or otherwise, a moron could be used, could be bribed to make complaints, and the Federal attorneys would file suits and hold up the certification of election of our entire legislature, not only in Louisiana but in all of these six other States.

Do you not see the Communist plan back of this thing? I do not hesitate to call it that, because that is what it is. I challenge anyone to debate it with me, and I will prove it right out of the Herndon, Ga., case by the U.S. Supreme Court, by the Communist program in the Bulganin booklet, by the Communist fronts who are sponsoring these mass actions and demonstrations that are creating all of this hysteria in the country.

(At this point in the proceedings, Senator Tydings left the hearing room.)

Senator DIRKSEN. Now, Mr. Perez, that is about as stupid a statement as has ever been uttered in this hearing, and it is a reflection upon Members of the Senate.

Mr. PEREZ. Sir, I would say that this is a reflection upon the Members of Congress if they give this type legislation serious consideration.

Senator DIRKSEN. Well, that is not what you said. Now, let us have the reporter read back your remark.

Mr. PEREZ. I say that through Communists you are being made unwitting tools——

Senator DIRKSEN. Just wait. I want to hear it read back.

(The statement referred to was read by the reporter.)

Senator DIRKSEN. Now, I still insist it is a reflection upon Members of the Senate and on the lawyers who participated in this to say that behind this is a Communist plan, and I think you ought to take that remark out of the record.

Mr. PEREZ. If the Senator would like to have that last part taken out of the record, I have no objection.

Senator DIRKSEN. I leave it to you, sir. If I were doing it, I would take it out of the record. I am not going to insist.

Mr. PEREZ. I will ask that it be taken out of the record, but I still say that the exhibits that I have filed can be used to make the point.

Senator DIRKSEN. That is quite a different statement from what appears in this record.

Mr. PEREZ. Yes, sir.

Senator SCOTT. I would like to say that I agree with what Senator Dirksen has said. I did not think anybody could outdo the Birch Society, but I am afraid Mr. Perez does it. I am glad he is going to take it out.

Mr. PEREZ. Any statement broad in its effect that insinuates communism I know is objectionable and distasteful. But I would like to point out again another angle of the developments. We have seen how Congress has passed legislation called equal employment opportunity, and it has put the national administration astride and in control of over 60 million jobs in private industry. We have seen how Congress has gone so far in the Civil Rights Act of 1964 as even to interfere with the State laws and with the individual rights as to sex

so that even as to sexes the employment rights of employees are interfered with under the act of Congress.

Now, then, if the Federal Government, if the Attorney General, who is simply the mouthpiece of the Chief Executive, is given absolute authority over our elections in six States, I can perceive that after the next election there will be some other States that will vote against the administration, and they may be drawn into the same type legislation by a simple amendment, and there is only one ultimate conclusion that can be drawn from this trend, and that is a one-party system in this country.

(At this point in the proceedings, Senator Hart entered the hearing room.)

Mr. PEREZ. A one-party system is the ultimate end and objective.

Senator DIRKSEN. Mr. Perez, where is West Feliciana Parish? Is that south or north Louisiana?

Mr. PEREZ. That is near Baton Rouge.

Senator DIRKSEN. Near Baton Rouge.

Mr. PEREZ. Yes, sir.

Senator DIRKSEN. Are you familiar with that parish or county?

Mr. PEREZ. Oh, not too much. I know the judge, the district attorney, the members of the legislature. I drive through there occasionally.

Senator DIRKSEN. Let me ask you, can you hear me pretty well?

Mr. PEREZ. I hear you.

Senator DIRKSEN. In that county, according to the Census Bureau, in 1960—and I leave off the odd figures—there were 2,800 white and 4,500 nonwhite. The number of white registered, 1,345; the number of nonwhite registered, 85. Eighty-five colored out of 4,553 persons of voting age. That is 1.9 percent.

Now, what conclusion would you expect a committee or anybody in public office to draw with respect to that kind of a one-sided figure when you are undertaking to do something about discrimination in the voter field? Would you say that was following a Communist plan?

Mr. PEREZ. No, sir; I have the answer for that, Senator.

Senator DIRKSEN. Yes, sir?

Mr. PEREZ. As of when was that data given?

Senator DIRKSEN. Well, they got the registration data—

Mr. PEREZ. 1960.

Senator DIRKSEN (continuing). From the Secretary of State of the State of Louisiana showing the registration.

The CHAIRMAN. When?

Senator DIRKSEN. October 3, 1964.

Mr. PEREZ. I would say that when a committee of Congress who does not know the local situation, who does not know and does not understand Negroes, their mentality, their thinking, their lack of interest except in getting welfare checks, could not understand it, and that is why I believe the members of the Constitutional Convention back in 1787 decided to leave it to the States to fix voter qualifications, which are equal for everybody.

Now, we have a similar experience. You might ask me about the percentage of voter registration in Plaquemines Parish. I wish you would. And I believe my answer to that would be an explanation of the situation in West Feliciana.

Senator DIRKSEN. Now, let me ask you this general question: Can we rely upon the Secretary of State of the State of Louisiana for registration figures?

Mr. PEREZ. Yes, sir; but those figures prove nothing with regard to the character of the people who are not registered.

Senator DIRKSEN. Oh, wait.

Mr. PEREZ. By the same token, when there were 2,800 whites and less than 50 percent of those are registered. People, too many people, do not show any interest at all in elections, in government.

Senator DIRKSEN. Well, this has nothing to do with the election. This is not a case of testing the apathy of a voter.

Mr. PEREZ. Yes, sir.

Senator DIRKSEN. This is the qualification of the voter. Your own secretary of state—and you appear here as a representative of the Governor of your State—

Mr. PEREZ. Surely.

Senator DIRKSEN. Your own secretary of state says that only 85 individuals nonwhite, meaning colored, out of 4,553 were registered in that parish.

I am not concerned for the moment about whether they voted or not. They could not vote if they were not registered. That is a requirement in the law. How come that only 85—1.9 percent of the eligible colored voters in that parish were not even registered to vote?

Mr. PEREZ. I would say, knowing the situation as I do generally, that is because they did not try to register.

Senator DIRKSEN. Let me ask you about Tensas County. There are 3,553 nonwhites of voting age. That is 1,000 more than there are white eligible voters. Of the 3,500 plus, only 60 were registered according to your own secretary of state. Do you mean to say that only 60 people with colored skins out of 3,553 would be so indifferent about registering to qualify themselves to vote that they did not even bother to try to register?

Mr. PEREZ. Yes, sir; and I can explain that, sir.

The CHAIRMAN. Would you explain it?

Mr. PEREZ. Sir?

The CHAIRMAN. Would you explain it?

Mr. PEREZ. Yes, sir.

The CHAIRMAN. You said you could explain it by Plaquemines Parish as I understood it.

Mr. PEREZ. Very well, sir. In Plaquemines Parish we have comparatively few Negroes registered. Bobby Kennedy as Attorney General brought a suit against our registrar of voters and complained of discrimination and coercion, and everything baneful and dangerous against the Negroes.

We disproved it, and the court held with us, and the court said there were 41 Negroes who appeared to register and failed to register.

Now, the registrar of voters of Plaquemines Parish, we ordered him to invite those same 41 Negroes to come back and register, and our registrar sent them a letter asking them to come back and register, and I would say only 15 of the 41 came back to register.

Now, my explanation is this further, sir, which you and the committee of Congress do not understand. In Louisiana we have every 4 years registration. Every 4 years there is a new registration except

in a few parishes that have adopted permanent registration or in a few parishes which the law provides for permanent registration.

Now, the new registration begins on the 2d of January 1964. And because the first-class citizens failed to come to register by October of 1964, we are to be condemned. We are to be persecuted. We are to have an act of Congress depriving us of our constitutional rights, to send a Federal examiner down there to list, not to register, but to list every Negro who is an adult whether he is a moron or anything else—whether he is a criminal or anything else.

We are not deserving of such punishment at the hands of our national lawmaking body.

Senator DIRKSEN. Now let us look at the Plaquemines Parish.

Mr. PEREZ. Yes, sir.

Senator DIRKSEN. First let me read you the footnote to these figures—official figures. "Data furnished by Secretary of State of Louisiana showing registration as of October 3, 1964." That was exactly 1 month before election day last year.

Now, we go to Plaquemines Parish. White of voting age, 8,633; number registered—this is your secretary of state's figure—7,627. That is 88.3 percent of the voting age population, white that were registered.

We now look at the colored figure. Nonwhite population, 2,897. That is a Census Bureau figure. The number registered colored—your secretary of state's figure—96.

Mr. PEREZ. That is correct.

Senator DIRKSEN. Do you mean to tell me that there is so little intelligence and urge in Plaquemines Parish that only 96 colored people out of roughly 2,900 even bothered to register to vote?

Mr. PEREZ. I mean to tell you that, sir, as a fact, and no one can deny it, and I am telling you that we just went through the gamut of a Federal court suit by Mr. Bobby Kennedy, and he had a dozen assistants down there. I remember he called me and took my deposition, and he had our registrar of voters on the stand and a deputy on cross-examination for days, and they came down to our registrar of voters' office and they photostated every piece of paper in the registrar of voters' office, and I was there personally, and I said let them copy everything. We have nothing to hide. And the Federal courts, sir, after a trial of days and days, held with us and against the unfounded allegations of the Attorney General's Office that there was discrimination, there was coercion, there was everything that is bad, and the court found with us, and Mr. Bobby Kennedy had to appeal the case. Yes, sir.

Senator DIRKSEN. Well, he appealed it for a reason.

Mr. PEREZ. Sir?

Senator DIRKSEN. He probably appealed it for an awfully good reason.

Mr. PEREZ. That is not a probability that is well founded except he lost the case, and he could not prove discrimination. He could not prove coercion, and the court found as a fact that everybody was treated alike, that the Negroes as well as the whites were treated with courtesy, and there were some whites that were helped and there were some Negroes that were helped by the registrar of voters. You cannot

make a case against Plaquemines and cannot make a case against West Feliciana, sir, if you knew the facts, simply by the statistics.

Senator DIRKSEN. Well, *prima facie* just on the basis of these figures, you give me a parish like Plaquemines where you register 88 percent of the whites and only 3.3 percent of the colored, and Mr. Perez, all I can say is there is something radically wrong down there.

Mr. PEREZ. Do you want me to tell you further what is radically wrong? We worked to get our people registered, and I will admit that we do not go out and beat the bushes to register the Negroes. You know why? In the adjoining parish of Saint Bernard in my judicial district there is about 800 Negroes registered in every election. They have got to pay them off. You have got to bribe them. You have got to pay the preachers. Now, that is the story, and that is why we do not try to register them. That is the story, and that is a fact that can be proven, sir.

Senator DIRKSEN. Who tries to bribe them?

Mr. PEREZ. That is not a funny question, sir.

Senator DIRKSEN. It is a serious question.

Mr. PEREZ. The Negro preachers who control them go to the candidates and demand bribes. Now that is a fact.

Senator DIRKSEN. What is the motive—

Mr. PEREZ. We know those things, sir, but you gentlemen up here—far removed from the scene do not know it. You are willing to condemn us. You do not know the facts.

Senator DIRKSEN. I am not trying to condemn you. Here is a figure that on its face is so incredible that unless there is something to rebut it, why one will have to accept it at its face value.

Mr. PEREZ. I am giving you the rebuttal, sir, and I can tell you that if we did not work and have the white people register, there would not be 50 percent of the white people register because of lack of interest.

Senator DIRKSEN. You say you work to get the whites registered.

Mr. PEREZ. Yes.

Senator DIRKSEN. That is quite all right.

Mr. PEREZ. Yes.

Senator DIRKSEN. Nobody quarrels with that. Were any obstacles placed in the way of the colored to keep them from registering?

Mr. PEREZ. Absolutely none, and the Federal court so found, sir, and I have filed the findings of the Federal court, his opinion in detail, of record as an exhibit to substantiate my statement for nonbelievers.

Senator DIRKSEN. Now, you have got—

Mr. PEREZ. Sir?

Senator DIRKSEN. You have got 19 counties down there where less than 15 percent of the colored voters are registered. Now, you have got altogether 64 counties and parishes as I understand it, is that correct?

Mr. PEREZ. It may be, but that does not prove anything.

Senator DIRKSEN. Here are your secretary of state's figures.

(At this point in the proceedings, Senator Javits entered the hearing room.)

Mr. PEREZ. Senator, if you will pardon me for saying so, it certainly does not authorize Congress to assume ungranted power and to violate the Constitution of the United States, to nullify our State laws, to force us into foreign courts, to do what the tyrannical king did back

in the days of the Founding Fathers, to impose that type of persecution upon us. It is un-American.

Senator DIRKSEN. You remember all the contentions that were made with respect to the 1964 Civil Rights Act, but particularly that title dealing with public accommodations and their availability to people regardless of race or color. Why there were any number of people who felt that that was an unwarranted intrusion on constitutionality, and that that title of the act was unconstitutional.

As a matter of fact, I had some difficulty with it myself on that score. But what did this Court do that is sitting over here in this huge white marble building? It was a unanimous decision.

Mr. PEREZ. That Court on which is inscribed, carved in marble, "Justice Under Law," yes, I know, and how they can stretch their imagination when it suits their purpose. There is no doubt about that.

Senator ERVIN. Judge, on that point, does the Constitution not say that Congress has the power to regulate interstate commerce?

Mr. PEREZ. Yes.

Senator ERVIN. And does interstate commerce not consist of the movement of persons, communications, and goods from one State to another?

Mr. PEREZ. Yes.

Senator ERVIN. The Court now holds and held in the Civil Rights cases that the Federal Government could regulate under the commerce clause every human activity from begetting babies to erecting tombstones at the graves of the departed, can they not, practically?

Mr. PEREZ. That is because of the deterioration of our American system of government that makes a scrap of paper of our Constitution and the rights of the American people.

Senator ERVIN. And did not a great Democrat named Woodrow Wilson and a great Republican named Charles Evans Hughes both say that if you ever reached that point, the courts could destroy our Federal system?

Mr. PEREZ. Yes, sir, and it violates a provision of the Constitution which guarantees to every State a republican form of government, and Congress is destroying that type and form of government. But it nullifies our laws and forces our people and our officials to come to Washington, a hand-picked court in Washington.

Senator ERVIN. I was intrigued as to why they did not try in this bill an interstate commerce clause—

Mr. PEREZ. I do not know; it does not take any great intelligence or foresight to see the trend. Why is this bill not aimed to give the President through the Attorney General the appointive power of State, district, and local officials and be honest about it. That is the direction in which it is going.

Senator SCOTT. Mr. Chairman, will you recognize me?

The CHAIRMAN. I recognize Senator Ervin.

Senator SCOTT. Would the Senator yield?

Senator ERVIN. I have just one more question.

Mr. PEREZ. Yes, sir?

Senator ERVIN. The figures introduced before the House committee by the Attorney General shows that in Louisiana 63 percent of all of the residents of voting age are registered, whereas in the State of

Arkansas only 56 percent of the population is registered, in the State of Florida only 54 percent, and in the State of Kentucky only 51 percent, and the State of Texas only 56.3 percent.

Do you think there is any rhyme or reason in the law—

Mr. PEREZ. That is no rhyme or reason.

Senator ERVIN. To leave those four States out?

Mr. PEREZ. There is no rhyme or reason. I want you to hear this if you please. Those statistics prove nothing, nothing dependable on the subject under discussion, because the census shows the number of people 21 years of age or over, but does it show how many are aliens? No. Does it separate them? No. And we are mighty near the 50 percent, but the aliens and everybody else, those possibly at military installations—and I have one in my own parish—you might remember the incident in Plaquemines Parish.

We have a big post in our parish. We have a lot of soldiers and sailors in our parish. They are included in that census. They are nonresidents. But still it raises the figure of adults in Louisiana to fool the people, to fool the Members of Congress. That is what is being done. Those figures prove nothing honestly. Let us take that into consideration. We have not had the time. We do not have the facilities to take a census of the adult citizens of Louisiana.

I can tell you that in my parish right now if a census were taken, you would find at least 5,000, maybe 10,000 more people in my parish than the 1960 census. And do you know why? Because of vast industrial developments, construction. And thousands of people are being brought in temporarily, noncitizens of Plaquemines Parish, a lot of them out of other States.

But those figures are accepted here to condemn us, to put us under a persecution statute.

Senator SCOTT. Mr. Chairman—

Senator ERVIN. I have no further questions.

The CHAIRMAN. Do you yield?

Senator ERVIN. I yield the floor.

The CHAIRMAN. Senator Scott is entitled, but I ask if you yield to Senator Scott.

Senator SCOTT. Mr. Perez, I want to go back to what you said as to why Negroes do not register. Would you mind telling me your opinion as to why only 3.3 percent of the Negroes are registered in Plaquemines and the same percentages more or less occur in other parishes?

Mr. PEREZ. Well, I can only tell you that we are fortified, it is not an opinion with us. It is a fact borne out by the record. It is because of lack of interest, lack of any effort to register, and certainly we are not to be condemned for that.

That was found by a solemn decision after a trial in the Federal court in New Orleans, and affirmed by the fifth circuit court.

Senator SCOTT. Mr. Perez, I recall you also said something about lack of character. Do you want to develop that?

Mr. PEREZ. Did I say lack of character?

Senator SCOTT. You said for reasons of not having character.

Mr. PEREZ. Well, if you want to go into that, sir—

Senator SCOTT. Yes, I do.

Mr. PEREZ. I could expound on that question, yes, sir.

Senator SCOTT. Would you expound on it?

Mr. PEREZ. Yes, sir, and I think that is why the moral qualification is left out of this Senate bill 1564. It is a matter of general knowledge, the immoral conduct of our Negroes, yes, sir, the large numbers of illegitimate children, yes, sir.

Senator SCOTT. You feel that because of the lack of moral character that this has something to do with the either failure or inability of Negroes to register?

Mr. PEREZ. No, I do not say so. I think it is just a low type of citizenship. They do not have the ambition, they do not have the urge, they do not know enough about government, they do not care. They are being well treated. They are being well taken care of. I know in my area they have the finest schools that could be found anywhere. They have accredited schools. We have less than 1 percent unemployment in my parish but we are condemned just the same by you people here who do not know anything about it. You are willing to take statistics and fabricated statistics that do not show the true facts.

As I say, we are near the 50 percent line, but still the aliens of the age are included in the statistics. There is no difference made as to them.

Senator SCOTT. Mr. Perez, you said a low type of citizenship. You are arbitrarily assuming that the Negro is a low type of citizen?

Mr. PEREZ. I would say—

Senator SCOTT. While a white man such as yourself is a different type of citizen.

Mr. PEREZ. I would say that, the rank and file, yes, sir. There is no doubt among people who know them.

Senator SCOTT. Now, what standards do you apply as to low or high type of citizens?

Mr. PEREZ. Well, I would say just plain morality and decency in the first place.

Senator SCOTT. That all of the white citizens of your parish are men of morality and decency.

Mr. PEREZ. Oh, there may be a few exceptions of course. Some of them are romantic, I would say. That is the exception rather than the rule.

Senator SCOTT. Does a conviction of a misdemeanor debar citizens from registering in your parish?

Mr. PEREZ. No, sir. It depends. I believe under our constitutional provision, if they have been repeatedly convicted except for traffic or game law violations. I think five convictions or something like that, repeated convictions within a certain period. And of course felonies.

Senator SCOTT. Are you not rather arbitrarily assuming that the failure of Negroes to be registered in your parish is due to a standard that you impose personally rather than to the reality that you do not want Negroes registered because your own political power would be destroyed if that were the case?

Mr. PEREZ. My political power would not be destroyed if every Negro in the parish registered.

Senator SCOTT. You are quite sure?

Mr. PEREZ. There is no fear about that.

Senator SCOTT. That, notwithstanding your low opinion of their morals, their character, and their rate of illegitimacies, that they would still accord to you their support if they were allowed to register.

Mr. PEREZ. If every Negro in Plaquemines Parish voted against me, it would not jeopardize the white majority that we have. I am not fearful of that at all.

Senator SCOTT. You said comparatively few Negroes live in your parish. I gather from the figures that the number is approximately 30 percent, is it not, 28 or 30 percent?

Mr. PEREZ. It could be.

Senator SCOTT. And are you not actively engaged in seeing that these Negroes are disenfranchised in your parish?

Mr. PEREZ. That is not true, not a word of it, sir, and we disproved that in the Federal court, as I said, and every attempt was made. I guess the Federal Government spent many thousands of dollars sending secret agents down there and taking statements and producing witnesses, and they failed in their effort to prove any such thing.

Senator SCOTT. That case is on appeal, is it not?

Mr. PEREZ. No, I do not think it is. The last I heard of it, I filed a copy—I do not know the status of the case there. But I think it may be pending on a trial on the merits finally, but as I say, we scored a decision in the trial of the case. It may have been for a preliminary injunction. I am not quite sure of that. But I know the case was tried thoroughly.

Senator SCOTT. In your judgment would not more Negroes seek to register if they were not aware of the fact that if they tried to register in your parish, they are discouraged and find it in most cases impossible to register?

Mr. PEREZ. No, sir, because our registrar of voters is under injunction against discrimination, and our registrar of voters is required to file a monthly report with the clerk of the Federal court of New Orleans as to every applicant, as to what was done with every applicant, whether he registered or whether he failed.

Senator SCOTT. What would happen——

Mr. PEREZ. So you have—every applicant or prospective applicant for registration has every protection of the Federal court, the Federal Government, regardless of this pernicious and outrageous Senate 1564. We are decent people. We are patriotic Americans, and we resent any effort even by this great deliberative body to subject us to a class of provincials, to be persecuted. We resent it, and we have a right to resent it.

If I were not a free-born American citizen, I would not dare to make such a statement, but I say it. You have got no right to do that to us. You are violating the Constitution and your sworn duty to uphold the Constitution, and the provisions are too plain and too clear. Nobody is dumb enough not to understand that.

Senator SCOTT. Mr. Perez, I am impressed by your claim to courage and patriotism, but I do not think that is the issue here. I gather that you would do nothing to put in the way of registration any obstacles if say 1,000 Negroes sought to register in your parish.

Mr. PEREZ. No, sir, of course not.

Senator SCOTT. You would welcome it.

Mr. PEREZ. I do not say I would welcome it, because I know of the character of the Negroes. They are subject to bribery. I know the history of voting. I participated in elections where I have seen Negro

leaders come to certain offices demand \$1,000, \$2,000, \$3,000 for an election.

Senator SCOTT. And who pays them? White men, is that not right?

Mr. PEREZ. Yes, sir, white men pay them.

Senator SCOTT. Yes, they do.

Mr. PEREZ. Yes, sir. I have never paid them. I can tell you, sir, I can tell you as a fact that no one can deny that for 40 years in Plaquemines Parish it is generally well known that I have had a standing reward of \$1,000 that I would pay myself for any evidence leading to the arrest and conviction of anyone who would offer to bribe a voter, and I prosecuted when I was district attorney, I prosecuted and convicted a white man for buying a \$20 vote, when he was a candidate for representative, and I have not found a single evidence of vote buying in Plaquemines Parish, sir, since then.

Senator SCOTT. But, Mr. Perez, would you want to deny that white voters, since there are so many more of them, are as much or more implicated in this Louisiana purchase as black voters?

Mr. PEREZ. No, sir.

Senator SCOTT. You would not.

Mr. PEREZ. There is no such thing as voters in the Louisiana purchase. There are some shenanigans going on between Washington and Louisiana among politicians, not the voters.

Senator SCOTT. I am speaking of the current Louisiana purchase where you say votes are still bought.

Mr. PEREZ. I say, sir, and I say no one will disprove it, that it is an accepted fact, it is traditional among Negro voters that the preachers solicit payment for the influence of their votes. I know of a personal friend of mine whose wife ran for commissioner in New Orleans. He said, "Judge, you want to hire some Negro preachers?" I said, "Why, do you have them on the payroll?" He said, "I have got 40 of them."

Senator SCOTT. As a citizen you were aware of this violation of the law and you have been district attorney.

Mr. PEREZ. It did not happen in my district, sir, I will guarantee you that.

Senator SCOTT. Did you do anything about it?

Mr. PEREZ. I did not. It did not happen in my district. I knew it was going on in other areas. I can tell you in other parts of Louisiana, for instance, southwest Louisiana, it is traditional there among white people. There were \$2 votes, \$5 votes, and \$10 votes, and our legislature passed an act to prohibit giving assistance on election day, and that was one of the reasons which compelled our legislature to go to voting machines.

Senator SCOTT. Mr. Perez—

Mr. PEREZ. I beg your pardon, sir. This bill would destroy the use of voting machines or the use of any device, and the substitution of paper ballots to bring about corruption in our application, in our elections under domination by the Federal Government. That would be the result of the provisions of this bill.

Senator SCOTT. You may have thrown some light on this question when you speak of \$2 and \$5 and \$10 votes.

Mr. PEREZ. That is correct.

Senator SCOTT. I take it the \$2 vote is for the people of low character and the \$10 vote for people of high character.

Mr. PEREZ. Well, they are a little cheaper. Really it is funny. As a matter of fact, it was so well established that they knew each other, the \$5 and \$10 voters would not ride in the same automobile with the \$2 voter when they are being brought to the polls. It was beneath their dignity. A \$10 vote would not ride in the same car with a \$2 vote.

Senator SCOTT. You segregated the voters according to how much you paid them, then.

Mr. PEREZ. Yes, sir.

Senator SCOTT. That is all I have.

Mr. PEREZ. It is not funny.

Senator DIRKSEN. Mr. Perez—

Mr. PEREZ. We have overcome those things. Now this bill would try to bring it back by Federal examiners, Federal listing, paper ballots. Do you know what happened in Chicago 4 years ago in the paper ballot precincts.

Senator DIRKSEN. Oh, sure.

Mr. PEREZ. Fraudulent registration certificates, and Chicago and Cook County gave a majority of over 308,000 votes, and when an order was secured to open the paper ballot boxes, they were found empty, evidence destroyed. Is that correct? I think it is. I remember I worked with the committee, and I was willing to help finance the contested election, and they got an order to open the ballot boxes. The evidence was destroyed.

Senator SCOTT. That was one of your Democratic Party colleagues, Mr. Perez, I believe led that theft of Illinois from Mr. Nixon that year.

Mr. PEREZ. But it can happen all over again if we open the door to frauds through paper ballots.

The CHAIRMAN. Let me ask you this question.

What in this bill would prohibit a convicted felon from voting?

Mr. PEREZ. There is no provision at all. It nullifies our State laws which requires that a person be a citizen. This bill does not even require that a person should be a citizen.

The CHAIRMAN. Who fixes voting qualifications?

Mr. PEREZ. That State legislature.

The CHAIRMAN. Under this bill who fixes voting qualifications?

Mr. PEREZ. Oh, this is sort of a bureaucratic deal that would leave it to the Attorney General, the Civil Service Commission. Now that would be, I say, an unlawful delegation of congressional law-making authority, but nobody seems to care about that.

The CHAIRMAN. Does Congress have such a power?

Mr. PEREZ. Congress does not have the power, but Congress would be delegating a power that it does not have to an administrative official, or a board.

The CHAIRMAN. Senator Hart?

Mr. PEREZ. It can be delegating a power which it does not have in the first instance.

Senator DIRKSEN. Mr. Perez, let me read you two sentences from the district court decision in that Plaquemines Parish case which came down on March 5, 1965. This is number 67.

Mr. PEREZ. You said what year?

Senator DIRKSEN. 1964, October term, Louisiana and other appellants versus the United States on appeal from U.S. District Court for the Eastern District of Louisiana.

The decision was handed down in the March 8, 1965, session. That is this month. Justice Black delivered the opinion of the court:

The applicant facing a registry in Louisiana thus has been compelled to leave his voting fate to that official's uncontrolled power to determine whether the applicant's understanding of the Federal or State constitution is satisfactory. As the evidence shows, colored people, even some with the most advanced education and scholarship, were declared by voting registrars with less education to have an unsatisfactory understanding of the constitution of Louisiana or of the United States. This is not a test but a trap sufficient to stop even the most brilliant man on his way to the voting booth.

That is Associate Justice Black of the U.S. Supreme Court speaking about that Louisiana case, and it is presently on appeal, and, as you indicated, it is on appeal on the merits of the case.

Mr. PEREZ. Senator, I think if you read that case, you will see where the Court enjoined 21 parishes from using the constitutional test including the Parish of Plaquemines. The Parish of Plaquemines was not even a party defendant in that suit. Our registrar was not cited, had no benefit of counsel, and we had been successful in the other suit, the direction action brought against our Plaquemines Parish registrar.

I say that that decision which included the Parish of Plaquemines among the 21 parishes enjoined in the case in which it was not a party was a strict miscarriage of justice, and that is all it was. Anybody who knows anything about law knows that a person can not be condemned without a hearing.

What happens to the fifth amendment, due process? We were not even a party to that suit.

Now then, following that decision, our registrar of voters was threatened with contempt proceedings, and we said, "Let us go to it." And this fine young lady submitted to a trial for contempt. They tried to break down her resistance to any lawlessness of the Federal courts, and they did not have the nerve to hold her guilty of contempt of court because we were bound by the injunction that was rendered in the direct action brought against us.

We were not a party to that case.

Senator DIRKSEN. Oh, you forget.

Mr. PEREZ. Sir?

Senator DIRKSEN. This case was brought against the State of Louisiana.

Mr. PEREZ. The State of Louisiana does not register people.

Senator DIRKSEN. Wait a minute. Mr. Justice Black delivered the opinion of the Court. Here is the opinion:

Pursuant to authority granted in 42 United States Code section 1971(c), the Attorney General brought this action on behalf of the United States in the U.S. District Court for the Eastern District of Louisiana against the State of Louisiana, the three members of the State board of registration, and the director's secretary of the board.

Mr. PEREZ. Yes, sir.

Senator DIRKSEN. And Plaquemines Parish is a part of Louisiana, or is it?

Mr. PEREZ. Plaquemines Parish operates under a parish government under its constitution and our governing body, sir, under the constitution of the State of Louisiana appoints our registrars of voters, not the Governor, not the voter registration or the director of registration, and our registrar of voters appointed by our parish governing body was not a party to that suit nor cited nor had the benefit of counsel nor made an appearance in that suit.

Senator DIRKSEN. I thought you said you came here this morning representing the Governor of Louisiana.

Mr. PEREZ. Well, that is not inconsistent with the position I take in another matter.

Senator DIRKSEN. He is the chief executive of the State of Louisiana.

Mr. PEREZ. Which is entirely irrelevant to a registrar of a parish appointed by a parish governing body not being made a party to a State suit.

Senator DIRKSEN. Is Plaquemines Parish in orbit somewhere?

Mr. PEREZ. No, sir. That is not funny either. Plaquemines Parish is not in orbit, sir, but Plaquemines Parish has certain rights under the Constitution. That is all.

Senator DIRKSEN. I just read you the solemn words of Justice Black. It says it is not a test but a trap. That is his language.

The CHAIRMAN. Yes, but I do not think in fairness now that that can be charged against Plaquemines Parish.

Mr. PEREZ. No, sir.

Senator DIRKSEN. Oh, I did not say so.

Mr. PEREZ. Because there was a direct finding in Plaquemines it was not used as a trap, it was not used for discrimination. The registrar was courteous, attentive, and fair to every applicant.

The CHAIRMAN. Wait just a minute. The first question Senator Dirksen asked was about Plaquemines Parish.

Mr. PEREZ. Yes, sir.

The CHAIRMAN. And then he cited the case against the State of Louisiana.

Senator DIRKSEN. That is correct.

Mr. PEREZ. And then he asked if Plaquemines was not a part of the State, which is entirely irrelevant to the situation.

The CHAIRMAN. Wait just a minute, please. Plaquemines Parish was not a party to it. As I understand it, there was a suit against Plaquemines Parish where the U.S. court held that there was no discrimination or no intimidation in Plaquemines Parish.

Mr. PEREZ. That is correct, sir.

The CHAIRMAN. That was held as a fact.

Mr. PEREZ. And I filed as evidence in the case this morning the opinion and the judgment of the court in that case.

Senator ERVIN. If I may ask a question.

Senator DIRKSEN. Let us clear up that point. The *Plaquemines* case, however, has not been decided on the merits yet, has it?

Mr. PEREZ. The *Plaquemines* case—

Senator DIRKSEN. On appeal.

Mr. PEREZ. Sir?

Senator DIRKSEN. On appeal it has not been decided on the merits.

Mr. PEREZ. It went through the Fifth Circuit of Appeals. The case was remanded for trial on the merits because this was a trial for a preliminary injunction, but I said—

Senator DIRKSEN. That is right.

Mr. PEREZ. It was tried thoroughly. It cost the U.S. taxpayers thousands of dollars, several lawyers from Washington came down there and camped for days and days, Senator, secret agents around gathering up evidence, and failed in the attempt to prove discrimination, coercion, or anything else against our Plaquemines Parish registrar, or anyone else in the Parish of Plaquemines.

Senator DIRKSEN. I thought that the merits were up on appeal?

Mr. PEREZ. No, sir.

Senator DIRKSEN. Yes. They found discrimination but not a pattern or a practice of discrimination.

Mr. PEREZ. No, sir.

Senator DIRKSEN. It is up on appeal.

Mr. PEREZ. I beg your pardon, sir, the decision speaks for itself, and I filed it in the record this morning.

Senator DIRKSEN. I must say you must have got fresh information on it just a few moments ago.

Mr. PEREZ. I stand on the record.

Senator DIRKSEN. Remanded.

Mr. PEREZ. Sir?

Senator DIRKSEN. Remanded by the fifth circuit back to the U.S. district court for trial on the merits.

Mr. PEREZ. That is correct, sir.

Senator DIRKSEN. Yes, sir.

Mr. PEREZ. But no reversal of the district court's finding of no discrimination, no coercion, nothing but fairness in our registration process.

Senator DIRKSEN. That has not been determined yet.

Mr. PEREZ. Oh, yes, it was determined.

Senator DIRKSEN. No.

Mr. PEREZ. It was determined to the embarrassment, I would say, of the Department of Justice. They thought they had a case, and they did not. They wanted to show up Perez, and they did not.

Senator DIRKSEN. May I say at this point in the record, far be it from me to say anything in derogation of the great Parish of Plaquemines.

Mr. PEREZ. Thank you, sir. You know we are really proud of our local government.

The CHAIRMAN. What was the vote in Plaquemines Parish in the presidential election of 1952? Who carried the parish?

Mr. PEREZ. When, 1964?

The CHAIRMAN. There was a reference to your Democratic colleagues. Who carried Plaquemines Parish in 1952?

Mr. PEREZ. Who were the candidates then? I do not recall.

The CHAIRMAN. Eisenhower and Adlai Stevenson.

Mr. PEREZ. Oh, my God. Anybody who heard Adlai Stevenson make that speech to the Mormon Tabernacle, great scott alive. I went all out against him, of course, and all of our people went along with us.

The CHAIRMAN. Who carried it?

Mr. PEREZ. Eisenhower I do recall. It was a notable election. Eisenhower scored 98 percent of the vote in Plaquemines Parish.

The CHAIRMAN. What about 1956?

Mr. PEREZ. Who were the candidates then? Eisenhower carried again. We were quite disappointed in him but there was no choice.

Senator DIRKSEN. I was going to say with—

The CHAIRMAN. What was the vote?

Mr. PEREZ. I do not recall.

The CHAIRMAN. Was it around 98 percent?

Mr. PEREZ. I do not think it was as heavy, but I know that we went all out for Eisenhower because Eisenhower had come out for State ownership of tidelands, and I had something to do with that through other sources, and framed the one question that was used in his speech when he announced it.

The CHAIRMAN. Who carried Plaquemines in 1960?

Mr. PEREZ. 1960? Oh, let's see, the candidates were Kennedy and Nixon. We did not like either one. We went States Rights.

The CHAIRMAN. Who carried in 1964?

Mr. PEREZ. Goldwater by a landslide.

Senator DIRKSEN. Mr. Perez, you do have some discriminating voters down there.

Mr. PEREZ. Well, I will tell you what we tell our voters. Shall I say what we tell our voters, sir? Wherever you see Dave Dubinsky and his liberal party go, wherever you see Walter Reuther go, go on the other side and you are safe.

Senator ERVIN. Mr. Chairman, if the committee will indulge me, I do have to go and attend to another matter, and I would like to have some items inserted in the record.

The CHAIRMAN. They will be inserted.

Senator ERVIN. I would like to have a letter written by the chancellor and probate judge of Arkansas put in the record. It is a fine interpretation of this bill.

I would like to have an editorial from the National Observer of March 29, 1965, inserted in the record.

I would like to have an article by John Chamberlain which appeared in the Washington Post for March 25 put in the record.

I would like to have an editorial from the Nashville Graphic of March 18, 1965, stating that the voting bill ignores basic laws of democracy, put in the record.

And I would like to have an article by Mr. A. T. Burch entitled "But Vote Bill Does Need Analysis" from the Chicago Daily News of March 26, 1965, printed in the record after the judge's remarks.

The CHAIRMAN. They will be admitted.

(The documents referred to follow:)

STATE OF ARKANSAS,
13TH CHANCERY CIRCUIT,
Fayetteville, Ark., March 25, 1965

HON. JOHN L. MCCLELLAN, *U.S. Senate, Washington, D.C.*

HON. J. W. FULBRIGHT, *U.S. Senate, Washington, D.C.*

HON. J. W. TRIMBLE, *House of Representatives, Washington, D.C.*

GENTLEMEN: I write you relative to the pending bill to be styled "The Voting Rights Act of 1965."

From the comments of various Members of the Congress reported in the press, and on the basis of what I consider to be purely political consideration, I have little doubt but that this bill will pass both Houses of the Congress after only a minimum period of committee consideration and open debate. Nevertheless, I would feel remiss in my duty as a citizen if I failed to communicate to you gentlemen my thoughts and opinions about this proposed legislation. I am op-

posed to the enactment of this bill primarily because I am convinced that it is rife with unconstitutional provisions. I believe that under existing Federal law ample safeguards and corrective and enforcement machinery exist. As I understand it, this legislation is proposed under the authority of amendment 15 to the U.S. Constitution and particularly under section 2 of that amendment whereby the Congress is given the power to enforce the amendment by appropriate legislation. This bill, I take it, is the administration's version of appropriate legislation.

It will be noted that amendment 15 prohibits the denial of the right of citizens of the United States to vote for any one or all of three reasons: (1) race, (2) color, or (3) previous condition of servitude. In reading the proposed act I fail to find anywhere in its language any reference to the denial or abridgement of the right to vote on account of anyone of these three factors. On the contrary, the bill rests its justification upon a number of untried assumptions, administrative decisions, and unproved conclusions; so that the full punitive and presumably corrective provisions of the bill may be called into play without any advance inquiry or prior determination as to whether in fact there has been a denial of the right to vote for any of the three stated constitutional reasons; or whether there has in fact, in any given case, been a discriminatory application of the otherwise valid voter eligibility laws.

I have always understood the law to be that the several States have the constitutional power to prescribe the qualifications of electors within the States. I have always understood, further, that it is only in the instance where a given State's voter qualifications law is in itself demonstrably unreasonable, or where the law, otherwise lawful, is discriminatorily applied, that it is subject to attack on constitutional grounds.

Thus, article 1, section 2 of the U.S. Constitution provides that the Members of the House of Representatives shall be chosen by the people of the several States, and the "electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature." Thus, again, by amendment 17 to the Federal constitution, in the election of U.S. Senators, "the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures." Thus, again, in the election of the U.S. President, article 2 of the Federal constitution, section 2, provides that "each State shall appoint, in such manner as the legislature thereof may direct, a number of electors * * *." These are the only references I find in the U.S. Constitution which in any way bears upon the qualifications of voters in the several States; and in each such reference, it is seen that the specification of the particular qualifications is a matter which is reposed by the constitution in the several States.

Now, coming to the proposed Voting act: Section 3 provides that no person shall be denied the right to vote because of his failure to comply with any test or device, defined as being any requirement that a prospective voter demonstrate the ability to read, write, understand or interpret any matter, possess good moral character, etc. This provision wholly ignores any question of whether such a test or device is or is not reasonable, and wholly ignores the question of the right of the States, whether wise or foolish, to prescribe such a test or device. The great vice, however, of this section 3, is the arbitrary manner in which it undertakes to establish, by legislative dictum, that the application of such a voter qualification is necessarily a discriminatory one. Thus, if in a given State or political subdivision the Attorney General determines that such a test or device did exist on November 1, 1964, and where it is determined by the Bureau of the Census either that less than 50 percent of the persons of voting age were registered to vote, or less than 50 percent of the persons registered actually voted in the presidential election of 1964, then it is administratively determined that all such persons have been, in the constitutional sense, denied their right to vote.

This wholly ignores the fact that many persons, for many reasons, simply failed to qualify themselves as voters, or simply failed to vote, although qualified to do so. It, in no sense, comes to grips with the question of whether there was a discriminatory denial or abridgement of the right to vote. It therefore follows that any State, or any political subdivision of a State, is branded as a violator of the constitutional rights of some of its citizens purely upon the undemonstrated, unproved opinions of two public officials, to wit, the Attorney General and the Director of the Census Bureau. The evil compounded in effect, if not in form, by withholding the processes of judicial examination and relief under the facts of the case, because this same section 3 provides that the only

Federal forum available to anyone feeling himself aggrieved by the application of the act is a three-judge Federal district court in the District of Columbia. It seems obvious that the factors of time, distance, and unavoidable expense involved in litigating a local matter in a court in the District of Columbia will in many, if not most, cases prove to be no practical benefit to those who are entitled to a judicial review.

Section 4 of the proposed act is a repetition of the same evils noted above but in a different area. This section provides that upon the written complaints of 20 or more residents of a given area, the Attorney General, upon his own decision that the complaints have merit, or that the appointment of Federal registrars is otherwise necessary, may request the Civil Service Commission to appoint as many examiners and registrars as the Commission feels to be necessary. Here again, the mere writing down of a complaint by 20 people, without proof, without prior examination or inquiry, leads to the invocation of the full powers of the Federal Government, and the imposition upon officials who, no matter how else it may be expressed, or upon what high-sounding grounds, will effectively take over the control of State voting machinery.

In section 5 of the act, the Federal examiners and registrars who may be appointed are given the power to strike from the voting list any prospective voter who has failed to vote for a period of 3 years after his name was first placed upon the Federal voters list. This provision, of course, is nothing more than the rank imposition of a Federal test for voting eligibility, and is but another way of exerting the moral and legal force of the Federal Government to require people to vote. Wholly aside from the question of political idealism, embracing the theory that every eligible person ought to vote in every election, the basic fact is undisputable that although one may have the right to vote and be eligible to vote, it is wrong to require him to vote, on pain of losing his franchise.

Section 5 also takes up the matter of poll taxes in the several States and simply takes over and assumes the prerogative of the States in matters of the poll tax. Under this part of section 5, if a prospective voter pays to a Federal examiner such poll tax as might be required by State law, then such person is qualified to vote, even though he has not paid his poll tax at the time and in the manner specified by State law. It is argued by the proponents of the voting rights bill that this provision of section 5 is based on the theory that such a voter had not earlier paid his poll tax because he had previously been discriminated against and therefore had no reason to pay the poll tax. This is the sheerest of sophistry, and erects an unproved structure upon a nonexistent foundation.

Section 8 of the proposed act is a sort of a reverse ex post facto law. This provides that any new State law imposing conditions or procedures for voting different than those in force on November 1, 1964, must be validated by a three-judge U.S. district court in the District of Columbia. This simply means that a State legislature must go, hat in hand, to the far remove of a remote Federal court and obtain that court's prior approval of a State voting law before that voting law becomes effective. This provision then, tears to literal shreds the long established principles of statutory construction, of constitutional interpretation, and of judicial procedure, under which a law is presumed to be valid unless and until it is held to be unconstitutional as a result of a case or controversy arising between persons with personal illigulous interests. With the minor exception of the recent development of statutes authorizing courts to issue declaratory judgments, there has not heretofore been any law, or theory of law, which in any fashion justifies the requirement that an act of a State legislature must first be approved by a U.S. court before it becomes law. But even under the statutory provision for declaratory judgments, if and when the matter to be decided involves an act of a State legislature, the question is not whether that act of that legislature shall be permitted to become law, but only whether such existing statutory law is or is not constitutional. Until and unless such a declaratory judgment proceeding is instituted, the State act is the law fully and completely, even though it is later struck down upon constitutional grounds.

In sum, this proposed law is so full of assumptions, unproved assertions, artificial conclusions; and is so chary of extending genuine rights of judicial review as to be patently and blatantly unconstitutional. And its presentation to the Congress, a majority of whose Members are supposed to be lawyers, should shock their legal consciences to their very foundations.

Under the cumulative regulatory and punitive provisions of the Civil Rights Acts of 1957, 1959 and 1964, it seems to me that there are ample provisions whereby the alleged violation of voting rights of any citizen by any State or political subdivision can be listed and punished, if the facts justify it, by the regular and traditional method of judicial inquiry and adversary trial proceedings. The fact, if it is a fact, that the application of existing remedies for violation of voting rights are thought to be too slow and cumbersome to provide genuine speedy relief and correction, is no justification at all for deliberately flouting the Constitution by the passing of the so-called Voting Rights Act of 1965.

The temper of the times being as it is, and the apparent grip of emotion over the entire civil rights spectrum being as it is, it appears to be a certainty that this bill will pass. If it does, and if its various provisions receive the probable endorsement of judicial review (again reflective of the apparent judicial temper of the times) I am frank to say that I believe with all conviction that a hammer blow will have been struck and an instrument forged thereby which spells destruction to the constitutional system of this country as it was envisioned and established by the Founding Fathers. If ever there was a time when calm, ordered, dispassionate appraisal and judgment should be exercised by the Congress, now is that time.

I do not know how you, Jim, and you, John, will vote on this measure. As for you, Bill, you have already stated that you are prepared to support a "reasonable" voting rights bill. As a former practising lawyer, as a former instructor in constitutional law, and as a Senator, I hope that your judgment will lead you to conclude that this bill is not a "reasonable" bill and that you will therefore vote against it. I hope that all three of you will do all you legitimately can to defeat this bill.

Sincerely,

THOMAS F. BUTT.

[From the National Observer, Mar. 20, 1965]

A PUNITIVE BILL

Emotions—even in a highly educated, 20th century, automated democracy—can run so high that men fear to speak their minds.

So it has been for almost a month, as the voting rights heat has built ever higher. Most of those voices who assert that men should be denied a vote because of the color of their skins were stilled long ago. The only question for most citizens has been how to bring about Negro suffrage in those places where it is denied.

But so high has the heat been built, so pell-mell the push to accommodate the marching thousands, that sensible questions are being overlooked. This is so even in the Congress, that body created to deliberate over the drafting of the laws, to deliberate so that correcting one injustice does not sow others in its place.

The voting bill now before Congress is plainly punitive legislation. If that is the intent of the Congress and the nation, even under emotional duress, so be it. But let there be no mistake that this is what it is.

It is directed against six States—Alabama, Georgia, Louisiana, Mississippi, South Carolina, and Virginia. The record of these States on Negro voting is bad indeed, viewed over the past 100 years. But Georgia, Virginia, and South Carolina have been moving to liberalize, slow though the movement may sometimes be. And in each of the six States there are citizens who do not oppress, citizens who in scores of quiet ways work to keep Southern society together as a segment of American society—including increasing the Negro vote. That aside, what is the intent—to get the Negro his vote or to punish for the sins of the past?

It is understandable that there should be a desire to punish, particularly among Negroes, particularly among the more emotional, both Negro and white. But what of the bulk of the population—is that its intent? Does it know what this voting bill provides?

For one thing, in effect it provides these six States can have no literacy qualifications for voting, whereas the other States can if they so wish.

And there is no doubt that this is aimed specifically at these six States; a complicated formula has been devised to make it so. If 50 percent or more inhabitants of voting age in a State have been voting, Federal authorities will stay out.

The voter himself is put under strictures, apparently to force him to vote. For if a person once registered to vote in these States fails to vote "at least once during three consecutive years while listed," he is stricken from the register. This may be the politician's dream, but it is hardly in the mainstream of the Nation's democratic history.

One essential reason the Nation is in a uproar—a belated uproar—over voting rights is that what can be denied a Negro in South Carolina can perhaps be denied a Swede in Minnesota or a Jew in Kansas or an Anglo-Saxon in New York. Thus the drive to equalize the vote, everywhere.

But if six Southern States can be made to conform to unusual voting standards, why not Minnesota and Kansas and New York? And why, some sad day, limit this punitive conformity to mere matters of the vote?

[From the Washington Post, Mar. 25, 1965]

YOUR VOTE—CAN U.S. SET STATE STANDARD?

(By John Chamberlain)

The law, however, should be limited to sending in registrars to provide even-handed justice in enforcing any given State's own election standards. The Federal Government has no right to substitute standards of its own. For the U.S. Constitution guarantees to the States the right to set their own voting qualifications, whether of age or literacy, provided the qualifications do not discriminate against anybody on a basis of race, creed, color, or previous condition of servitude.

As things now stand, the Johnson administration would in effect abolish the literacy test in any State in which 50 percent of the eligible voters are either not registered or have failed to vote in the last election.

As is intended, this would strike at places like Selma, Ala., where there have been instances of arbitrary and unfair applications of the literacy qualification.

But it would also strike at South Carolina, where violations of the law respecting registration of literate Negro voters have been conspicuous by their rarity. The South Carolina law stipulates that a person must be able to read a section of the Constitution or, as an alternative, possess \$300 worth of property as registered on the tax books.

There have been no outstanding complaints that South Carolina communities have been applying the law in a discriminatory way. Yet, since fewer than 50 percent of the people over 21 years of age voted in the last election in South Carolina, Washington would be justified under the proposed legislation in sending Federal registrars to oversee voting throughout the State. And the Federal agents would be empowered to suspend South Carolina's literacy requirements in favor of a purely nominal test that would not meet the State's own unexceptionable standards.

What impresses honest and decent southerners about all this is that it actually denies equal protection of the law under the pretense of providing this protection. It penalizes the just along with the unjust. The big trouble in South Carolina, for example, is that voters are lethargic. But lethargy is neither a State nor a Federal offense.

The proposed voting registration law would also discriminate unfairly between the good Southern States and a Northern State such as New York, which has its own literacy test.

In New York a voter has either to show that he can read or write English or present evidence of an 8th grade education. This effectively disqualifies Puerto Ricans who are literate only in Spanish.

No doubt the purposes of the New York law are good: propositions are presented in the polling booth in the English language, and citizens who can't read these propositions can hardly vote intelligently on them. Yet, since more than 50 percent of New Yorkers go to the polls, the State would be allowed to continue its literacy test whereas South Carolina, for instance, would not. How this can be justified under the U.S. Constitution, which says the privileges and immunities of the citizens shall be equal, is a mystery.

So let's have a Federal law that will guarantee fair enforcement of local election laws without telling States what their own standards shall be. It is a rule of good legislation that it should not throw out the baby along with the dirty bath water.

[From the Nashville (Tenn.) Graphic, Mar. 18, 1965]

EDITORIALLY SPEAKING: LBJ'S VOTING BILL IGNORES BASIC LAW OF DEMOCRACY

Political observers predict that President Johnson's voting rights bill will have easy sailing through the Congress.

Its purpose, according to the President, is to "help rid the Nation of racial discrimination" at the ballot box.

There is nothing wrong with this purpose. The color of a man's skin should have nothing to do with his eligibility to vote.

But there is something wrong with a bill that eliminates all restrictions on voting, including a simple literacy test.

How can any voter, regardless of his color, cast an intelligent ballot if he does not have the ability to read the names of candidates that are listed on the ballot form?

Without the ability to read, it will be quite possible for a citizen to vote for Barry Goldwater, or some other Republican candidate for President, when he really intended to vote for Lyndon Johnson and the Great Society.

Must there be another politically inspired bill to eliminate any such horrendous possibility as this?

And where will control by the Federal Government end?

The President's bill provides that the Government may appoint registrars in any voting district where less than half the eligible voters are registered or failed to vote in the preceding general election. The Federal registrars will have the authority to register any protesting citizen without applying the literacy test.

The bill ignores the fact that the U.S. Constitution reserves to the individual States the right to establish their own voting laws.

It ignores the fact that there are already laws on the books under which discrimination in voting may be eliminated through the courts.

Most important of all, it violates the basic premise of democracy which holds that there can be no individual rights without individual responsibilities.

But the voting bill will become law because we are living in a time when political expediency takes precedence over all other considerations.

States' rights are fading into the limbo of an age that is dying. And with it, many fear, may also be dying the last best hope for democracy on this earth.

[From the Chicago Daily News, Mar. 26, 1965]

BUT VOTE BILL DOES NEED ANALYSIS

(By A. T. Burch)

In his speech at Cleveland Wednesday, the Rev. Martin Luther King expressed hope that President Johnson's bill on voting rights would not suffer "paralysis from analysis."

Nevertheless, various researchers outside the Government have analyzed it, including Congressional Quarterly, Inc. I am indebted to it for most of the statistics I shall refer to.

If many Congressmen analyzed the bill with equal care, they might agree with Monday's Wall Street Journal that it is an "immoral bill." In my opinion, it needs revision, and its passage should be "paralyzed" long enough for that purpose.

The formulas for applying the proposed remedies for voter discrimination certainly do not establish uniform nationwide standards. In fact, they establish new discriminations between States which, in turn, invite discrimination between persons. The new discriminations themselves seem to violate the letter and the spirit of the Constitution.

Most obvious of these discriminations is the outlawing of every kind of literacy tests in a few States, while leaving them in force in other States. Certainly, no State should be permitted to manipulate literacy tests to discriminate against literate Negroes, as some Southern States have done, most noticeably, at the moment, Alabama.

But the Supreme Court has repeatedly declared, and in recent years, that States have the right to exclude abjectly illiterate people from voting, whatever their race or color. In fact, all Northern States with literacy tests would be permitted to keep them, so far as the Johnson bill is concerned.

In my opinion, such tests represent good public policy when reasonably drafted and honestly applied. Total illiteracy should no more be a qualification for voting than feeble-mindedness or mental irresponsibility. The new bill recognizes the right of States to exclude felons and legally committed mental defectives.

This bill provides for Federal takeover of registration and vote-counting only where both of two conditions exist simultaneously. One condition is that less than half the voting-age population of a State or subdivision shall have voted in the 1964 election. States may still set the voting age. The number of the voting-age population, for the bill's purpose, is the census bureau estimate for November 1, 1964. The second condition is the existence in such State of any literacy test whatever.

One of the illogical discriminations built into the new bill is the different treatment provided for some subdivisions, such as counties, where both conditions for Federal intervention prevail. Take a literacy-test State where more than half the voting-age population of the whole State voted in 1964. Then the Federal treatment applies only to subdivisions where less than half voted.

But the rule is different in a literacy-test State where less than half the voting-age population of the whole State voted in 1964. In such a State, Federal authority may take over in every county, including counties where more than half the voting-age population may have voted.

If the State has no literacy test at all, no part of its area is subject to the new law no matter how small the proportion of actual voters to the number of voting age.

There is an appeal procedure through which some States or subdivisions might escape from the proposed Federal controls. Such a unit might file suit before a three-judge court in the District of Columbia to prove that it had not actually discriminated against any potential voters on account of their race or color at any time within 10 years.

This is the provision under which it is now being assumed that Alaska could get out from under. It might also rescue the one county in Maine, the one county in Arizona, and the one county in Idaho which appear to be threatened by the double-barreled formula.

Previous court findings of discrimination make certain that Alabama, Louisiana, Mississippi, and Georgia, would immediately get the full Federal treatment. By coincidence—or is it?—all these States cast their electoral votes against Lyndon B. Johnson last November.

Two other States within the formula—South Carolina and Virginia—have no court findings of racial discrimination on the record. But the Government, it is reported, is prepared to produce evidence that they have discriminated against Negroes in registration and voting.

South Carolina delivered its electoral votes to Sen. Barry Goldwater, Virginia to Mr. Johnson. Presumably the Government would press its case for a finding of actual discrimination with equal zeal against both.

However, the six Southern States mentioned above were not the only ones where less than half the people of voting age voted in 1964. In Texas, the vote was only 44.4 percent—which is less than the 47.3 percent in Louisiana and only a fraction more than Georgia's 43.2. In Arkansas, the percentage was 49.9 percent.

The vote was less than 50 percent in each of 137 counties in Texas, but neither the counties nor the State would be disturbed because there is no literacy test. They would be treated like Alabama if they had tests like California's or New York's, which the new bill does not propose to void.

Both Texas and Arkansas delivered their electoral votes to Mr. Johnson. The Attorney General tells congressmen that the low rate of voting in these two States was due to voter apathy, rather than discrimination.

Still, it is only 16 months since an important part of Texas was widely denounced as a very hell-hole of racism and bigotry. It is only a few years since Federal troops were in Arkansas to put a few Negro children in a school.

Can one honestly assume that no traces of bigotry linger in either of these States to restrict the turnout of voters or the honesty of the count? So Mr. Johnson seems to assume. At any rate, the power structure of his home State would not be touched by his proposed law.

The CHAIRMAN. Senator Hart.

Senator HART. Mr. Perez, first I feel more comfortable now that we have identified the election returns from that parish of 1952. I

would have been hesitant to ask because I was afraid they went the other way.

This morning you suggested several times that persons with something less than a devotion to this country participated in the drafting of this bill.

(At this point in the proceedings, Senator Ervin left the hearing room.)

Senator HART. I will not attempt to identify because I do not know all who had a hand in the effort to present this bill to the Congress. But let me identify those whom I do know who participated and who had taken an oath of office, and then ask whether you suggest that any of these were motivated by anything other than a deep devotion to the country: The minority leader, Senator Dirksen; our colleague on this committee, Senator Hruska; my majority leader, Senator Mansfield; and at points in the conference, the junior Senator from Michigan; the Attorney General of the United States; and at points in the conference, the Deputy Attorney General.

In view of this explanation as to those who participated in the drafting effort, do you still suggest that motive behind this bill is evil?

Mr. PEREZ. I would say unqualifiedly that the gentlemen whom you have named are beyond question good loyal Americans and good citizens. I have no doubt about that. I do not know the background. I do not know what the minority or the majority leaders were handed from some other sources, but I can say as a fact that there is very little new in this bill because of what was attempted against us in the suit 2 or 3 years ago cross-the-board so-called manhood suffrage, universal registration without qualifications, and that is the crux of this bill, and the appointment of a Federal registrar.

That is again the personal part of this bill. There is nothing new to that.

Senator HART. You quarrel with our judgment; is that correct?

Mr. PEREZ. Oh, I say that if you really would exercise your judgment, independent judgment on this bill, and would simply look at article I, section 2, and the 17th amendment of the Constitution, and article I, sections 3, 4, and 5 which preserve to the House and to the Senate the authority to determine the qualifications of its Members, I think all of those constitutional questions which would be violated by this bill, I think it would be a most healthy thing to see the members of this committee and the Congress exercise their judgments on those questions.

Senator HART. Well, it is a self-serving statement, but each of us felt we were acting as independent Members of Congress.

Mr. PEREZ. I do not question the motives of the Members.

Senator HART. What I am trying to find out is why the heavy larding in your prepared statement of the position of the Communist Party with respect to the franchise in this country?

I was trying to find out if there was an implication, if you felt that the bill we have presented to the Congress is a consequence of the Communist suggestions.

Mr. PEREZ. There is no doubt about it, Senator, that this bill would work hand-in-glove with the Black Belt conspiracy.

Senator HART. That was not my question.

Mr. PEREZ. Was it not?

Senator HART. No.

My question is whether you feel that we have as agents of some foreign power—

Mr. PEREZ. Of course not; none of my remarks I hope will be taken in a personal way. I am only analyzing the bill, and the result of the bill. Then I measure it with the finding of the Supreme Court in the *Herndon* case. I have devoted a good deal of time to this question of Communist infiltration.

I remember when the Supreme Court handed down that decision in March 1954, I could smell it. And then I looked in the California Senate report on subversive and Communists in government, and there I found several of the characters whom the Court had cited as its psychological authorities. Then I came up here and with certain other help we dug into the question of the Communist background of the authorities cited by the Court, especially Gunnar Myrdahl's book, and so on.

I have done a great deal of work on that and I am not going to be fooled. I know the result of this thing. I know how it will fit in with the Black Belt conspiracy, and I do not question the motives of anyone. I am only looking to the painful results of this type of legislation.

Senator HART. It just strikes me as absolutely nuts to suggest that—

Mr. PEREZ. Absolutely what?

Senator HART. Nuts.

Mr. PEREZ. N-u-t-s?

Senator HART. Nuts to suggest.

Mr. PEREZ. Yes, sir.

Senator HART. That those engaged in seeking to broaden the exercise of the franchise in a free society are doing something that should be questioned.

Rather, I suggest that they should be supported. That is the point I am trying to make.

Mr. PEREZ. I think that type of motive honestly entertained by anyone is laudatory, but still I cannot help but point to the fact that this body, this lawmaking body, does not have such authority under the Constitution. This lawmaking body should be restrained from exercising ungranted constitutional authority.

Senator HART. Now you have given us your impression as to why the percentage of Negroes registered to vote in Louisiana is so low. Do I understand that basically it is because you feel the character of the Negro is such that there is not adequate motivation, that he is indifferent to government and to the vote? And I take it ignorant.

Is that, speaking broadly, the reasons you assign?

Mr. PEREZ. I say speaking broadly that is almost correct, and I brought in the bribery angle which is uncontroversial, sir.

Senator HART. To what extent would you add the element of fear as a reason to explain the strikingly low percent?

Mr. PEREZ. I have not seen any evidence exhibited in my parish or in any of the adjoining parishes, and I have no intimate connection or relationship with parishes I would say beyond Plaquemines, St. Bernard, Orleans, and Jefferson. And I know that in those parishes—and I think that represents roughly a third of the State's population—that there is no such situation existing. And it is strictly a myth.

You gentlemen up here, I would say you are influenced by a lot of false propaganda in the news media that make capital out of things south that they hardly notice in the same things north, east, and west.

(At this point Senator Dirksen left the hearing room.)

Senator HART. You think the President of the United States was unduly influenced by some news story when he told us that time was running out, and somehow or another we would have to devise a method that can protect Americans from night riders?

Mr. PEREZ. Oh, I think night riders of course are reprehensible and abominable, and I think anyone who commits the crime of violence, murder, or anything else, naturally they should be dealt with according to law. But while one crime by night riders is emphasized, there are other crimes just as heinous which are not, and I do not know that we want to go into that.

A girl dragged by eight Negroes to be raped, a young sailor tries to defend her and he is beaten up to a pulp; a fine young Jewish woman I believe in a New York elevator followed by a Negro who pulls her down to the basement, rapes and murders her; a fine young man stabbed to death, a constable, a police officer in Mississippi murdered by a Negro, none of these things are capitalized for propaganda.

Senator HART. Mr. Perez, over the years those of us who have been here concerned with this civil rights question, always we are told when we suggest that there is force and violence against a Negro in the South to prevent him from exercising a federally guaranteed right, we are told what is the difference between that and assault on a subway or a knifing in a city park in the North.

Mr. PEREZ. I do not know—

Senator HART. Just a minute.

The answer we feel is very clear. The community is offended in the North by this conduct. Due process of law follows and punishment is meted out. We sometimes get the feeling that those who use force and violence in the South to create an atmosphere which produces the kind of voting registration figures we are talking about today is sort of a local hero, and is contributing to the folklore which creates some sort of pride in the community, and this is the difference.

That is a harsh thing to say, and I will conclude—

Mr. PEREZ. I would like to answer, Senator, when you get through if it is a question.

Senator HART. No, it is not a question.

Whether rationally or not, I think that sincere though your statements have been, they serve only to convince more strongly than ever those of us who support this kind of legislation that there is very great need for it.

(At this point, Senator Javits left the hearing room.)

Senator HART. In fairness, since we spent all day sitting together, I thought, you having told me your impression about this bill, I had better tell you my impression in light of the testimony just given.

The CHAIRMAN. Judge, will you comment now?

Are you through?

Senator HART. Yes.

Mr. PEREZ. Yes, sir, I would like to comment on that.

The CHAIRMAN. All right, sir.

Mr. PEREZ. Because a crime on the streets of the South does not compare with a crime on the streets from the Nation's Capital, North, and East.

I can recall that I was here with Mrs. Perez, my wife, about 4 years ago, and we left our Congressman's office I believe, and we were walking right by the Capitol in a beautiful little park, the wife and I, and two policemen came up to us. We had strolled within a block or two. These policemen said, "Mister, I do not know where you are from, but I would advise you not to walk along the streets," at about 4 o'clock on a bright afternoon in the Nation's Capital. It was not safe for a man and his wife to walk peacefully along the boulevard enjoying the beautiful scenery, within a block from the Nation's Capitol.

Then we find that in Philadelphia, after a series of violent crimes by Negroes, the police are riding the streetcars, the subways, with police dogs. And of course we should forget, because the news media has not carried on the propaganda, what happened in New York and in the other States with those demonstrations and the acts of violence and how the police were brutalized, and in turn they were charged with brutality.

No, it is unfortunate, but we should not encourage the fronts who carry out the orders of the Comintern to stir up strife and national disunity in our land, and that is what the fronts are busy doing.

As men of reason, we should recognize that fact, and not be stampeded into violating the Constitution or enacting of such legislation as this. It will certainly do not good.

What do you expect will happen in the South when the Federal Government tries to impose Negro rule on the South in the second Reconstruction?

Why was the Klan born during Reconstruction times?

To defend white women, encouraged by the military during the first Reconstruction.

What will happen when the second Reconstruction comes, sir? It is our women that we have to protect, and we are going to protect them, and if the people have to go underground, that is where they are going. It is a threat against the South.

This is the most pernicious bill that has ever been thought of since reconstruction times, the most abominable threat of legislation against us. There is no place for this in our system of laws under the Constitution.

Senator HART. Mr. Perez, I think none of us here, you nor I nor others, want to see what you fear come to the South, military rule. But I think the South had better come up with some solution to the problem of 2, 3, 4, and 5 percent of a whole group being registered or suggest to us a solution that will cure this, or else the second Reconstruction that you talk about will have been brought upon you as the first one was.

Mr. PEREZ. No, sir; we are not called upon to take anybody by the hand and have them register. There are enough laws on the books now, enough so-called civil rights laws, to protect everybody's rights, and the courts are open to them.

Now, the purpose of this legislation is to close the courts in matters of registration, nullify all laws as to registration in the six Southern States that would be penalized, make conquered provinces of them, because the process is not fast enough.

(At this point Senator Burdick entered the hearing room.)

(At this point Senator Tydings returned to the hearing room.)

Mr. PEREZ. Why?

Now we, as practical politicians, know why. We are not being fooled and we do not like it. Because the present Democratic administration wants another landslide next time, because five Southern States voted against them, and they want to punish them. They want to put Negro rule over them because they can control the votes. Because this Congress is voting bills and bills for the same people that they want to list as voters.

You have a poverty program. You have a so-called education appropriation of a billion and a quarter. For what?

So-called underprivileged children of families making less than \$2,000 a year that are already on the welfare rolls at State and Federal taxpayers' expense. Now people are not blind to that. It is another political payoff.

This country apparently will take a long time to finally pay off for this last election. Let's be frank about it. There is no doubt about that. We are not fooled by what is going on up here.

We, the taxpayers, have no rights. We shell out under penalties. That type of legislation is nothing less than bribes, ill disguised.

Senator HARR. Mr. Perez, I am sorry if you go back to Louisiana feeling that the purpose for this legislation is to satisfy the ambitions of Communists, and a President who wants to carry five more States next time.

Men and women who voted against the President of the United States, North, East, West, and South, share the conviction that we had better get legislation like this, and we are really indifferent to the attitude of the Communists in this effort.

Do not go south thinking that this is some handmaiden of a conspiracy between Lyndon Johnson and political ambition of the Communists.

(At this point Senator Javits returned to the hearing room.)

Senator HARR. This really is an effort to respond to the overwhelming conscience of this country. That is just as serious a note on which to close as any I can think of perhaps, Mr. Chairman.

Mr. PEREZ. Senator, could I hand you this? I did not want to offer it in the record, but I want you to read it.

Senator HARR. Is this my FBI file?

Mr. PEREZ. No.

I thought I might offend somebody's feelings if I offered it for the record.

The CHAIRMAN. Senator Tydings.

Mr. PEREZ. I do not mind handing it to the members of the committee if they want to see it.

The CHAIRMAN. Senator Burdick, any questions?

Senator BURDICK. No.

Senator HRUSKA. Mr. Chairman, I do not know that I have any questions, but the opinion was read from in part in the east of Louisiana and others against the United States, the opinion that was delivered by Mr. Justice Black on March 8, 1965. I think it would be good for the record to have the entire text of the opinion appear in the record so that the passages read from will not be out of context.

I shall ask unanimous consent.

The CHAIRMAN. It will be included at the conclusion of his testimony.

(The opinion referred to follows:)

SUPREME COURT OF THE UNITED STATES

No. 67.—OCTOBER TERM, 1964.

Louisiana et al., Appellants, v. United States.	}	On Appeal From the United States District Court for the Eastern District of Louisiana.
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[March 8, 1965.]

MR. JUSTICE BLACK delivered the opinion of the Court.

Pursuant to authority granted in 42 U. S. C. § 1971 (c) (1958 ed., Supp. V), the Attorney General brought this action on behalf of the United States in the United States District Court for the Eastern District of Louisiana against the State of Louisiana, the three members of the State Board of Registration, and the Director-Secretary of the Board. The complaint charged that the defendants by following and enforcing unconstitutional state laws had been denying and unless restrained by the court would continue to deny Negro citizens of Louisiana the right to vote, in violation of 42 U. S. C. § 1971 (a) (1958 ed.)¹ and the Fourteenth and Fifteenth Amendments to the United States Constitution. The case was tried and after submission of evidence,² the three-judge

¹ "All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding." 16 Stat. 140, 42 U. S. C. § 1971 (a) (1958 ed.).

² The appellants did not present any evidence. By stipulation all the Government's evidence was presented in written form.

District Court, convened pursuant to 28 U. S. C. § 2281 (1958 ed.), gave judgment for the United States. 225 F. Supp. 353. The State and the other defendants appealed, and we noted probable jurisdiction. 377 U. S. 987.

The complaint alleged, and the District Court found, that beginning with the adoption of the Louisiana Constitution of 1898, when approximately 44% of all the registered voters in the State were Negroes, the State had put into effect a successful policy of denying Negro citizens the right to vote because of their race. The 1898 constitution adopted what was known as a "grandfather clause," which imposed burdensome requirements for registration thereafter but exempted from these future requirements any person who had been entitled to vote before January 1, 1867, or who was the son or grandson of such a person.³ Such a transparent expedient for disfranchising Negroes, whose ancestors had been slaves until 1863 and not entitled to vote in Louisiana before 1867,⁴ was held unconstitutional in 1915 as a violation of the Fifteenth Amendment, in a case involving a similar Oklahoma constitutional provision. *Guinn v. United States*, 238 U. S. 347. Soon after that decision Louisiana, in 1921, adopted a new constitution replacing the repudiated "grandfather clause" with what the complaint calls an "interpretation test," which required that an applicant for registration be able to "give a reasonable interpretation" of any clause in the Louisiana Constitution or the Constitution of the United States.⁵ From the adoption of the 1921 interpretation test until 1944, the District Court's opinion stated, the percentage of registered voters

³ La. Const. 1898, Art. 197, § 5. See generally Eaton, *The Suffrage Clause in the New Constitution of Louisiana*, 13 Harv. L. Rev. 279.

⁴ The Louisiana Constitution of 1868 for the first time permitted Negroes to vote. La. Const. 1868, Art. 98.

⁵ La. Const. 1921, Art. VIII, §§ 1 (c), 1 (d).

in Louisiana who were Negroes never exceeded one percent. Prior to 1944 Negro interest in voting in Louisiana had been slight, largely because the State's white primary law kept Negroes from voting in the Democratic Party primary election, the only election that mattered in the political climate of that State. In 1944, however, this Court invalidated the substantially identical white primary law of Texas,⁶ and with the explicit statutory bar to their voting in the primary removed and because of a generally heightened political interest, Negroes in increasing numbers began to register in Louisiana. The white primary system had been so effective in barring Negroes from voting that the "interpretation test" as a disfranchising device had fallen into disuse. Many registrars continued to ignore it after 1944, and in the next dozen years the proportion of registered voters who were Negroes rose from two-tenths of one percent to approximately 15% by March 1956. This fact, coupled with this Court's 1954 invalidation of laws requiring school segregation,⁷ prompted the State to try new devices to keep the white citizens in control. The Louisiana Legislature created a committee which became known as the "Segregation Committee" to seek means of accomplishing this goal. The chairman of this committee also helped to organize a semiprivate group called the Association of Citizens Councils, which thereafter acted in close cooperation with the legislative committee to preserve white supremacy. The legislative committee and the Citizens Councils set up programs, which parish voting registrars were required to attend, to instruct the registrars on how to promote white political control. The committee and the Citizens Councils also began a wholesale challenging of Negro names already on the voting rolls, with the result that

⁶ *Smith v. Allwright*, 321 U. S. 649.

⁷ *Brown v. Board of Education*, 347 U. S. 483.

thousands of Negroes, but virtually no whites, were purged from the rolls of voters. Beginning in the middle 1950's registrars of at least 21 parishes began to apply the interpretation test. In 1960 the State Constitution was amended to require every applicant thereafter to "be able to understand" as well as "give a reasonable interpretation" of any section of the State or Federal Constitution "when read to him by the registrar."⁸ The State Board of Registration in cooperation with the Segregation Committee issued orders that all parish registrars must strictly comply with the new provisions.

The interpretation test, the court found, vested in the voting registrars a virtually uncontrolled discretion as to who should vote and who should not. Under the State's statutes and constitutional provisions the registrars, without any objective standard to guide them, determine the manner in which the interpretation test is to be given, whether it is to be oral or written, the length and complexity of the sections of the State or Federal Constitutions to be understood and interpreted, and what interpretation is to be considered correct. There was ample evidence to support the District Court's finding that registrars in the 21 parishes where the test was found to have been used had exercised their broad powers to deprive otherwise qualified Negro citizens of their right to vote; and that the existence of the test as a hurdle to voter qualification has in itself deterred and will continue to deter Negroes from attempting to register in Louisiana.

Because of the virtually unlimited discretion vested by the Louisiana laws in the registrars of voters, and because

⁸ La. Act 613 of 1960, amending La. Const., Art. 8, § 1 (d), implemented in La. Rev. Stat. §§ 18:35, 18:36. Under the 1921 constitution the requirement that an applicant be able "to understand" a section "read to him by the registrar" applied only to illiterates. La. Const., 1921, Art. 8, § 1 (d); compare *id.*, § 1 (c).

in the 21 parishes where the interpretation test was applied that discretion had been exercised to keep Negroes from voting because of their race, the District Court held the interpretation test invalid on its face and as applied, as a violation of the Fourteenth and Fifteenth Amendments to the United States Constitution and of 42 U. S. C. § 1971 (a).⁹ The District Court enjoined future use of the test in the State, and with respect to the 21 parishes where the invalid interpretation test was found to have been applied, the District Court also enjoined use of a newly enacted "citizenship" test, which did not repeal the interpretation test and the validity of which was not challenged in this suit, unless a reregistration of all voters in those parishes is ordered, so that there would be no voters in those parishes who had not passed the same test.

I.

We have held this day in *United States v. Mississippi, ante*, p. —, that the Attorney General has power to bring suit against a State and its officials to protect the voting rights of Negroes guaranteed by 42 U. S. C. § 1971 (a) and the Fourteenth and Fifteenth Amendments.¹⁰ There

⁹ "Although the vote-abridging purpose and effect of the [interpretation] test render it *per se* invalid under the Fifteenth Amendment, it is also *per se* invalid under the Fourteenth Amendment. The vices cannot be cured by an injunction enjoining its unfair application." 225 F. Supp., at 391-392.

¹⁰ It is argued that the members of the State Board of Registration were not properly made defendants because they were "mere conduits," without authority to enforce state registration requirements. The Board has the power and duty to supervise administration of the interpretation test and prescribe rules and regulations for the registrars to follow in applying it. La. Rev. Stat. § 18:191A; La. Const., Art. 8, § 18. The Board also is by statute directed to fashion and administer the new "citizenship" test. La. Rev. Stat. § 18:191A; La. Const., Art. 8, § 18. And the Board has power to

can be no doubt from the evidence in this case that the District Court was amply justified in finding that Louisiana's interpretation test, as written and as applied, was part of a successful plan to deprive Louisiana Negroes of their right to vote. This device for accomplishing unconstitutional discrimination has been little if any less successful than was the "grandfather clause" invalidated by this Court's decision in *Guinn v. United States*, *supra*, 50 years ago; which when that clause was adopted in 1898 had seemed to the leaders of Louisiana a much preferable way of assuring white political supremacy. The Governor of Louisiana stated in 1898 that he believed that the "grandfather clause" solved the problem of keeping Negroes from voting "in a much more upright and manly fashion" ¹¹ than the method adopted previously by the States of Mississippi and South Carolina, which left the qualification of applicants to vote "largely to the arbitrary discretion of the officers administering the law." ¹² A delegate to the 1898 Louisiana Constitutional Convention also criticized an interpretation test because the "arbitrary power, lodged with the registration officer, practically places his decision beyond the pale of judicial review; and he can enfranchise or disfranchise voters at his own sweet will and pleasure without let or hindrance." ¹³

remove any registrar from office "at will." La. Const., Art. 8, § 18. In these circumstances the Board members were properly made defendants. Compare *United States v. Mississippi*, *ante*, at 12-13.

There is also no merit in the argument that the registrars, who were not defendants in this suit, were indispensable parties. The registrars have no personal interest in the outcome of this case and are bound to follow the directions of the State Board of Registration.

¹¹ Louisiana Senate Journal, 1898, p. 33.

¹² *Ibid.*

¹³ Kernan, The Constitutional Convention of 1898 and its Work, Proceedings of the Louisiana Bar Association for 1899, pp. 59-60.

But Louisianans of a later generation did place just such arbitrary power in the hands of election officers who have used it with phenomenal success to keep Negroes from voting in the State. The State admits that the statutes and provisions of the state constitution establishing the interpretation test "vest discretion in the registrars of voters to determine the qualifications of applicants for registration" while imposing "no definite and objective standards upon registrars of voters for the administration of the interpretation test." And the District Court found that "Louisiana . . . provides no effective method whereby arbitrary and capricious action by registrars of voters may be prevented or redressed."¹⁴ The applicant facing a registrar in Louisiana thus has been compelled to leave his voting fate to that official's uncontrolled power to determine whether the applicant's understanding of the Federal or State Constitution is satisfactory. As the evidence showed, colored people, even some with the most advanced education and scholarship, were declared by voting registrars with less education to have an unsatisfactory understanding of the constitution of Louisiana or of the United States. This is not a test but a trap, sufficient to stop even the most brilliant man on his way to the voting booth. The cherished right of people in a country like ours to vote cannot be obliterated by the use of laws like this, which leave the voting fate of a citizen to the passing whim or impulse of an individual registrar. Many of our cases have pointed out the invalidity of laws so completely devoid of standards and restraints. See, e. g., *United States v. L. Cohen Grocery Co.*, 255 U. S. 81. Squarely in point is *Schnell v. Davis*, 336 U. S. 933, affirming 81 F. Supp. 872 (D. C. S. D. Ala.), in which we affirmed a district court judgment striking down as a violation of the Fourteenth and Fifteenth Amendments

¹⁴ 225 F. Supp., at 384.

an Alabama constitutional provision restricting the right to vote in that State to persons who could "understand and explain any article of the Constitution of the United States" to the satisfaction of voting registrars. We likewise affirm here the District Court's holding that the provisions of the Louisiana Constitution and statutes which require voters to satisfy registrars of their ability to "understand and give a reasonable interpretation of any section" of the federal or Louisiana constitutions violate the Constitution. And we agree with the District Court that it specifically conflicts with the prohibitions against discrimination in voting because of race found both in the Fifteenth Amendment and 42 U. S. C. § 1971 (a) to subject citizens to such an arbitrary power as Louisiana has given its registrars under these laws.

II.

This leaves for consideration the District Court's decree. We bear in mind that the court has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future. Little if any objection is raised to the propriety of the injunction against further use of the interpretation test as it stood at the time this action was begun, and without further discussion we affirm that part of the decree.

Appellants' chief argument against the decree concerns the effect which should be given the new voter-qualification test adopted by the Board of Registration in August 1962, pursuant to statute¹⁵ and subsequent constitutional amendment¹⁶ after this suit had been filed. The new test, says the State, is a uniform, objective, standardized "citizenship" test administered to all prospective voters alike. Under it, according to the State, an applicant is

¹⁵ La. Act 62 of 1962, amending La. R. S. 18:191A.

¹⁶ La. Act 539 of 1962, amending La. Const., Art. 8, § 18.

"required to indiscriminately draw one of ten cards. Each card has six multiple choice questions, four of which the applicant must answer correctly." Confining itself to the allegations of the complaint, the District Court did not pass upon the validity of the new test, but did take it into consideration in formulating the decree." The court found that past discrimination against Negro applicants in the 21 parishes where the interpretation test had been applied had greatly reduced the proportion of potential Negro voters who were registered as compared with the proportion of whites. Most if not all of those white voters had been permitted to register on far less rigorous terms than colored applicants whose applications were rejected. Since the new "citizenship" test does not provide for a reregistration of voters already accepted by the registrars, it would affect only applicants not already registered, and would not disturb the eligibility of the white voters who had been allowed to register while discriminatory practices kept Negroes from doing so. In these 21 parishes, while the registration of white persons was increasing, the number of Negroes registered decreased from 25,361 to 10,351. Under these circumstances we think

" Like the District Court, we express no opinion as to the constitutionality of the new "citizenship" test. Any question as to that point is specifically reserved. That test was never challenged in the complaint or any other pleading. The District Court said "we repeat that this decision does not touch upon the constitutionality of the citizenship test as a state qualification for voting." 225 F. Supp., at 397. The Solicitor General did not challenge the validity of the new test in this Court either in briefs or in oral argument, but instead recognized specifically that that issue was not before us in this case. And at oral argument in this Court the attorney for the United States stated that the Government has pending in a lower court a new suit challenging registration procedures in Louisiana "under the new regime," i. e., employed subsequent to the invalidation of the interpretation test in this case. The new "citizenship" test, he said, "is simply not an issue in this proceeding and was not invalidated in the lower court and we are not here challenging it."

that the court was quite right to decree that, as to persons who met age and residence requirements during the years in which the interpretation test was used, use of the new "citizenship" test should be postponed in those 21 parishes where registrars used the old interpretation test until those parishes have ordered a complete reregistration of voters, so that the new test will apply alike to all or to none. Cf. *United States v. Duke*, 332 F. 2d 759, 769-770 (C. A. 5th Cir.).

It also was certainly an appropriate exercise of the District Court's discretion to order reports to be made every month concerning the registration of voters in these 21 parishes, in order that the court might be informed as to whether the old discriminatory practices really had been abandoned in good faith. The need to eradicate past evil effects and to prevent the continuation or repetition in the future of the discriminatory practices shown to be so deeply engrained in the laws, policies, and traditions of the State of Louisiana, completely justified the District Court in entering the decree it did and in retaining jurisdiction of the entire case to hear any evidence of discrimination in other parishes and to enter such orders as justice from time to time might require.

Affirmed.

MR. JUSTICE HARLAN considers that the constitutional conclusions reached in this opinion can properly be based only on the provisions of the Fifteenth Amendment. In all other respects, he fully subscribes to this opinion.

Senator HRUSKA. Mr. Perez, you have stated in your testimony a little bit ago that there was a violation of section 5 of article 1 of the Constitution, and I presume you refer to the language therein reading this way:

Each house shall be the judge of the elections, returns and qualifications of its own members.

Mr. PEREZ. Yes, sir.

Senator HRUSKA. I take it further that you have reference to section 9-E when you say that this act violates that part of our Constitution. That is the one which authorizes the Federal court to issue an order enjoining certification of the results of the election?

Mr. PEREZ. Yes, sir.

Senator HRUSKA. Let me ask you, Mr. Perez, if section 2 of the 15th amendment would not be the basis for the concluding section 9-E in the bill that we are now considering, and that section 2 reads:

The Congress shall have power to enforce this article by appropriate legislation.

Mr. PEREZ. That certainly does not imply the right to tie up elections and to take away from the Senate and the House the right to be the judge of elections returns and qualifications of its own members. It never has been construed that way and could not logically be construed that way, sir.

But the reason why I cited section 5 of article 1 was because from a practical standpoint, when a case gets into court, it could be tied up months and months, a year or more before final adjudication. In the meantime, where does Congress stand with its authority and with its right to be the sole judge of the election returns and qualifications of its own members, when six senators next time in next year's election could be held up in such litigation without a certification of a certificate of election. They could not appear before the Congress to be recognized.

The Congress would have no right under this legislation, this proposed legislation, to judge as to the election and returns and qualifications until it has a certificate of election. That certificate would be enjoined.

That is what I mean. I think it is very clear.

Senator HRUSKA. And it is your thought that section 2 of article 15 would not reach so far?

Mr. PEREZ. Absolutely, no, sir.

Senator HRUSKA. As to have Congress empowered to legislate in such a way that would transgress section 5?

Mr. PEREZ. Absolutely, sir, because any person, any person could file complaint that his vote was not counted, and an injunction could be issued. He would not have to allege that his vote or any vote would change the result of the election as is required by State law in any election contest.

It must be alleged that these illegal votes, these disqualified votes, if cast out, these illegal votes if counted would change the result of the election. Not here.

Any moron, any person could complain to a Federal attorney under this bill, "I have been interfered with in my right to vote. Somebody attempted to interfere. My vote was not counted."

Bingo, an injunction is issued by an accommodating Federal court under authority of the Department of Justice. And the Senators' and the Congressmen's election returns are bottled up and no certificate is issued. It cannot get to the House. It cannot get to the Congress so that Congress can exercise its constitutional right to be the judge of the election and the returns of one of its own members.

Senator HRUSKA. Mr. Perez, if an injunction were issued pursuant to section 9, do you think the Congress would be bound by it and that they would heed that injunction order?

Mr. PEREZ. Necessarily so, sir, because from a practical standpoint, from the mechanics of the thing, no election certificate would be issued from that State or that district as to the election of a Senator or Congressman. The injunction would prevent them from issuing a certificate of election.

Senator HRUSKA. And it is your thought that until a certificate is issued, that neither House of the Congress acquires jurisdiction over the election?

Is that your point?

Mr. PEREZ. I say that, yes, sir, definitely.

Senator HRUSKA. There are several of these sections, you know, Mr. Perez, that are under consideration for amendment and for revision, and I wanted to bring this point out as clearly as I could so that we would understand the basis for your objection.

Mr. PEREZ. My basis is strictly constitutional. If I had the privilege of making one suggestion for amendment, do you know what it would be?

Senator HRUSKA. I have an idea.

Mr. PEREZ. I would strike out lines 1 and 2 "Be it enacted by the Senate and House of Representatives of the United States."

Senator HRUSKA. That was my first question, Mr. Perez, but I did not express it.

Mr. PEREZ. I would strike out the enacting clause.

Senator HRUSKA. Thank you very much.

Mr. PEREZ. Thank you, Senator.

The CHAIRMAN. Senator Javits?

Senator JAVITS. Mr. Perez, I have not been here throughout your testimony, so that if I ask anything which you have already answered, I hope that you will state that. I have had other problems and other responsibilities in other committees today. I was interested, though, in the fact that a great deal of your testimony is philosophical and sociological, and so I hope you will answer this question.

Do you think it is good for the United States for approximately 3 to 4 percent of the Negroes to be voting and not more in your particular parish?

Mr. PEREZ. It is not a question of whether it is good or whether it is bad.

This bill naturally would avoid any effort on the part of Negroes to register. They would not be registered under this bill. They would be listed. They might be given numbers, but they would be listed. That is not registration. But under that they would be given the right to vote.

Now that implies in itself that those who perfected this bill and who are responsible for that provision realize that the Negroes do not

have sufficient interest in language or enough numbers to go and register on their own. They have to be listed.

Senator JAVITS. I gather that Negroes in your parish pay taxes like white people, do they not?

Mr. PEREZ. Oh, I tell you we have the lowest tax rate in the State, and there are not 10 percent of property holders in Plaquemines that pay a property tax. I would say there is not but a handful of Negroes that pay taxes of any kind.

Senator JAVITS. You make every effort to collect taxes whether it is from white or Negro, do you not, when they are due?

Mr. PEREZ. Oh, yes, but as I say, we have the lowest tax rate in the State, and we have a homestead tax exemption of \$2,000, and I did not check the figures, but in the 10 percent of the property holders, including corporate property holders who pay property tax, I dare say that not 100 Negroes in Plaquemines Parish pay taxes, property taxes.

Senator JAVITS. Do you think that it is the function of government to encourage people to vote?

Mr. PEREZ. Well, we do everything in a general way to encourage people to register. I remember the New Orleans newspapers publishing paid ads reminding people that there are only a certain number of days left to register, and the importance of registering to vote and the duties of the citizen to register and vote, and that is a commonplace thing. The newspapers are just full of it. But they do not respond.

Senator JAVITS. You, I gather, sir, are an important, or at least you are a political leader of your parish, are you not? You have been for many years?

Mr. PEREZ. Well, I would say that I have held local office, and I am strictly a local government man since December of 1919. I think that is so, but I think we have made a record of which we can be justly proud.

Senator JAVITS. Have you ever undertaken any activities to encourage whites to vote?

Mr. PEREZ. Yes, sir.

Senator JAVITS. Of what character?

Mr. PEREZ. Sir?

Senator JAVITS. Of what character?

Mr. PEREZ. Well, we have an organization, and that organization contacts their friends and asks them to go and register. That is the usual activity.

Senator JAVITS. Has that been done by your organization with respect to Negroes at any time?

Mr. PEREZ. No, and I gave the reason why we personally do not canvass and encourage Negroes to register.

We leave them on their own. If they register, it is all right. And I do not know whether you were here when I gave my reason for it.

The CHAIRMAN. No, sir; he was not here.

Mr. PEREZ. The reason for that is, Senator, that it is customary; it is traditional among the Negro voters that they have certain leaders, principal preachers, and around election time these preachers are pretty adept at shaking down candidates. They will go to one, they will go to the other and they want a price from one and a price from the other. Of course we do not like to be involved in bribing voters.

In my parish, as I say, for 40 years I have had a standing cash reward of \$1,000 for anyone who gives information that would lead to the arrest and conviction of anybody for vote buying.

I will say that my parish is as clean as any unit of government can be from that standpoint.

Senator JAVITS. So that this activity which you describe does not take place in your parish?

Mr. PEREZ. I will guarantee you that, sir.

Senator JAVITS. And so in your parish the Negro is let strictly alone?

Mr. PEREZ. They are on their own; yes, sir.

Senator JAVITS. You do not encourage them to vote. You do not discourage them. You do nothing about it?

Mr. PEREZ. That is correct, sir, and the Federal court so found in a contested suit brought by the Attorney General against our parish registrar of voters.

Senator JAVITS. You do encourage white people?

Mr. PEREZ. Yes, sir; I do.

Senator JAVITS. Did you ever consider it the duty of citizenship to encourage all people to vote?

Mr. PEREZ. I do not think it is incumbent upon us to encourage those whom we think would not be good voters.

Senator JAVITS. Do you think a condition of immorality among Negroes is of a character which communicates itself to the whole community so that it is advisable to——

Mr. PEREZ. I do not say that it affects the white people but it does affect the Negro community and very much so.

I remember just recently we took a little census, a partial census. We wanted to see how many people were employed, for instance. Our census taker came back and showed me one case where a Negro woman had 21 children and 11 fathers of 21 children, and that is an exceptional case maybe, but that is the usual run of things.

Senator JAVITS. Do you not think it would contribute to the health and prosperity of your community if that situation was improved?

Mr. PEREZ. I will tell you what we are doing to try to improve it, sir, and we are the only ones doing it in the whole United States, and I say it without question. We have the finest schools. We spent 12 and a half million dollars in building modern schools for our Negroes and whites. We offer scholarships, sir. We spent over \$50,000 a year to give scholarships to encourage Negroes and whites alike, graduates of our high schools, to go to college, and I daresay the State of New York or Illinois or any other State in the Union does not do it.

We have stepped up our scholarship program to offer as much as \$400 for any of our high school graduates taking physical science, engineering, medicine, and if they made grades of an average of 3 out of a possible 3.5, we double it. If they make a 2.5 average out of a possible 3.5, we give them a 50-percent bonus.

That is the type parish government we operate.

Senator JAVITS. Would you say that the——

Mr. PEREZ. That is for every school year.

Senator JAVITS. Would you say that the educational level of the Negro community in your parish has risen in the last 10 years?

Mr. PEREZ. Oh, undoubtedly it has.

Senator JAVITS. Has risen markedly?

Mr. PEREZ. But I can tell you, sir, that immorality exists among our Negro teachers. We have had to fire a principal who had an affair with a schoolteacher; a schoolteacher, a graduate of one of our Negro universities had to get, what is it called, marital leave and the superintendent said "I didn't know you were married." She said, "I ain't, but I expect to be after the child is born."

And that kind of stuff. This morality idea is just foreign to them.

Senator JAVITS. As the educational level has risen, has the extent of Negro voting risen?

As the educational level has risen, I gather from what you say that the percentage of Negro voting has not risen.

Mr. PEREZ. We have a very small percentage of our Negroes who are registered, because they have not made any effort to register.

Senator JAVITS. Even those who have become educated? You say that is true even of those?

Mr. PEREZ. I say that generally, yes, sir.

I will tell you of the experience that we had in this suit which the Attorney General brought against our registrar.

There were 41 Negroes who had not passed the registration tests and the court ordered the registrar to notify them to come to the courthouse and be registered. The registrar complied, wrote these 41 Negroes, and I say there were not 15 percent of them who responded, who even came back to try and register.

Now those are not conditions resulting from intimidation, coercion, discrimination or anything, sir, because the court so found, and the Attorney General's Office sent us I think a dozen assistants down there at the cost of thousands of dollars to try to prove something. They did not like Perez. They were going to prove something. And they did not prove a thing.

Senator JAVITS. From discriminatory testing you say it was not attributable to any of those?

Mr. PEREZ. Yes, sir.

The court found that the registrar deputy helped some white people and also helped some Negroes to register.

Senator JAVITS. Have any white people been barred from voting because of immorality?

Mr. PEREZ. I can tell you I am sure as many or more white people were denied registration because they failed to qualify than Negroes were turned down.

Senator JAVITS. I asked about immorality.

Mr. PEREZ. I understand your question, sir.

Senator JAVITS. If I may finish my question.

Mr. PEREZ. Pardon me.

Senator JAVITS. I understood from you that you did not feel as a leader that you had any reason to encourage Negroes to vote because of their immorality. Well, I am just trying to find out whether you felt the same way about white people who were immoral.

Mr. PEREZ. There is no prevalent immorality among our white people. There is no tendency for white people to sell their votes.

Senator JAVITS. That is a finding of fact which you have made?

Mr. PEREZ. I must finish my answer, if you will pardon me.

I would say that there is not a single Negro who was turned down from registration because of immorality and I do not know of any white person who was turned down either. Now that is an answer to your question. Not one, either Negroes or whites.

Senator JAVITS. Thank you.

The CHAIRMAN. Judge, I want to ask you one question and then we will go to another subject.

You have three classes of schools in Plaquemines Parish, do you not?

Mr. PEREZ. Schools?

The CHAIRMAN. Yes, three schools.

Mr. PEREZ. We have public schools. We have the Negroes, we have the whites. They are all modern schools. We spent, as I say, \$12.5 million.

The CHAIRMAN. Do you not recognize three castes?

Mr. PEREZ. Oh, I see what you mean. As a matter of fact, if this is what you mean, Senator, and I think it would be revealing to the Senator from New York as well.

You see, we have two classes among Negroes. The light colored and mulattoes will not associate with the black Negroes. I can tell you for a fact that—

The CHAIRMAN. I want to ask you the question.

There are schools for whites?

Mr. PEREZ. Yes, sir.

The CHAIRMAN. Schools for mulattoes, and schools for Negroes; is that correct?

Mr. PEREZ. Yes, sir.

The CHAIRMAN. Now, that is three different schools, school systems.

Were the mulatto schools and the Negro schools integrated?

Mr. PEREZ. No, sir.

As a matter of fact, we offered to set up a separate school for mulattoes in the lowest section on the west side because mulattoes would not go to school with Negroes. We had a \$1.5 million school that we built for the Negroes. We fitted up a two-room place and said all right, mulattoes, if you do not want to go to the Negro schools we will give you a couple of teachers and bring your children over here.

We made them an offer. In another place further above at City Price. The mulattoes would not go to school with the Negroes there, so there is a Baptist preacher who operates a school for mulattoes. And that is the way it goes.

At Pointe Ala Hache we have a school the police had to knock down two extra doors, the middle door for the whites on the right, for the mulattoes, on the left for the dark Negroes. They would not even sit in the same pews in church, the mulattoes and the Negroes.

Now that is something that you people here do not understand. There is a caste among them. They are separate. And we certainly do not make any effort to bring that situation about. And it has been existing a long time.

I remember when I was a young fellow and my father hired a young mulatto boy as his chauffeur. And he took his cousin who was rather dark to a mulatto dance down at City Price and they beat the stew out of him and ran him out of the dancehall because he was black.

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And that is the way it goes. No act of Congress is going to change that.

The CHAIRMAN. Any further questions?

Judge, you have made a very fine statement and raised some questions that this committee has got to give consideration to. I want to thank you, sir.

Mr. PEREZ. Thank you, gentlemen.

The CHAIRMAN. We will recess now until 10:30 in the morning. Tomorrow we will have an assistant attorney general of Georgia whose name I do not know. We will have the Chairman of the Civil Service Commission.

(Whereupon, at 4:35, p.m. the committee adjourned, to reconvene at 10:30 a.m., Wednesday, March 31, 1965.)

VOTING RIGHTS

WEDNESDAY, MARCH 31, 1965

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to recess, at 10:45 a.m., in room 2228, New Senate Office Building, Senator James O. Eastland (chairman) presiding.

Present: Senators Eastland (chairman), Ervin, Hart, Kennedy of Massachusetts, Bayh, Dirksen, Fong, and Javits.

Also present: Palmer Lipscomb, Robert B. Young, Thomas B. Collins, professional staff members of the committee.

The CHAIRMAN. The hearing will be in order.

Here is a statement from the Honorable Richard J. Hughes, Governor of the State of New Jersey. It will be placed in the record.

(The statement of Governor Hughes follows:)

STATE OF NEW JERSEY
OFFICE OF THE GOVERNOR,
Trenton, March 26, 1965.

HON. JAMES O. EASTLAND,
Senate Office Building,
Washington, D.C.

DEAR SENATOR EASTLAND: Because of the intense interest of the people of New Jersey in the Voting Rights Act of 1965 now before the House Judiciary Committee, I respectfully submit the attached statement which expresses my views on the subject as chief executive of this State.

Thank you for your consideration.

Sincerely yours,

RICHARD J. HUGHES, Governor.

STATE OF NEW JERSEY,
OFFICE OF THE GOVERNOR,
Trenton, March 26, 1965.

This Nation was born in a Revolution which sought to achieve human rights. It engaged in a bloody Civil War to guarantee that no American would ever again be treated as a piece of property, but as the human repository of a divine spark. Two great wars around the globe were fought to make the world safe for democracy, yet the right to vote—the essence of democracy—is challenged in Alabama and other areas today.

The history of the franchise in this Republic is a history of the progressive removal of one artificial limitation after another on the right to vote. In post-revolutionary America the property-holding limitation was removed. In the mid-19th century the right to vote was granted to former slaves. In our own time, women's suffrage was formally ratified and restrictions such as literacy tests or poll taxes are gradually falling by the wayside.

In making strenuous efforts to implement fully the 15th amendment to the Constitution in the civil rights crisis before us, the Congress, by considering the voting rights bill of 1965, takes a logical step forward in keeping with the stated ideals of this country, and comes closer to a fuller measure of freedom for all its citizens. The right to vote in a democracy is not divisible on the basis of

class or color or race if universal suffrage is to have any meaning. The Negro American citizen cannot and will not be excluded from our birthright of freedom and equality of opportunity.

New Jersey proudly places itself in that tradition of freedom and the expanded franchise. In this century there has not been one case on record of the denial of voting rights to any citizen of this State because of color or race. And New Jersey today probably has the most liberal voting laws of any State in the Nation.

Any person, resident in the State for 6 months and in the county for 40 days before an election, may register to vote if he is not mentally incompetent or has not been convicted of a crime specified in the voting statute.

Most important, voting registration in New Jersey is permanent as long as the voter casts his ballot in at least one election during a consecutive 4-year period. If he does not, his permanent registration lapses and he must then reregister.

Blind or otherwise physically incapacitated persons may register in their homes. Those who cannot read or write may register by making a mark in the presence of witnesses. Residents who are registered to vote traveling or living temporarily outside the State or the country may vote by absentee ballot. In addition, qualified members of the Armed Forces from New Jersey, wherever they be stationed, are considered registered upon making application for an absentee ballot.

The appeal to local initiative has been stressed in many counties by the establishment of mobile registration centers which offer evening opportunities to register in one's own residential area.

Central election offices in New Jersey are also open for registration on an average of 150 working days every year. We encourage not only the acts of registration and voting but an understanding of the candidates and the issues at stake. Before every primary and regular election, each New Jersey County Board of Elections must send a sample election ballot to every registered voter in that county. In this manner the electorate becomes familiar with candidates and public questions in advance of the election, and, in addition, the sample ballot serves to keep voter lists up to date and aids in the prevention of election fraud.

Notwithstanding this record, I am not unmindful that there are aspects of the New Jersey election laws which could and should be further liberalized to assure the greatest possible participation in our election process. I intend to press for such further reforms in New Jersey, especially in the area of registration. These reforms would go far beyond what is required in the act under your consideration.

Thus, in urging that your committee adopt the Voting Rights Act of 1965, New Jersey does not ask you to go beyond the bounds of reason or to exercise partisan political power. New Jersey is a State which under its liberal voting laws has elected Democratic and Republican Governors, legislatures, Congressmen, and Senators. We believe in letting the people choose for themselves. And we also believe that everyone must be given that opportunity to choose whatever his color or his race or his ethnic background.

Speaking for the overwhelming majority of the people of this State, I respectfully urge you to adopt and implement the Voting Rights Act of 1965.

RICHARD J. HUGHES, Governor.

The CHAIRMAN. Here are sundry letters that will be copied into the record.

(The letters referred to follow:)

MARCH 20, 1965.

HON. JOHN T. CONNOR,
Secretary, Department of Commerce,
Washington, D.C.

Please supply the Senate Judiciary Committee with all statistics that you have prepared and submitted to the Civil Rights Commission and all other information that you may have available pursuant to title 8 of the Civil Rights Act, 1964, Public Law 88-352, wherein you were directed to conduct a survey and to compile registration in voting statistics in such geographic areas as may be recommended by the Commissioner on Civil Rights, etc.

Time is of the essence since hearings start Tuesday, March 23, in the Senate Judiciary Committee on S. 1564, the President's draft bill to enforce the 15th amendment to the Constitution of the United States and the committee is instructed to report back to the Senate not later than April 9.

JAMES O. EASTLAND,
Chairman, Senate Committee on the Judiciary.

THE SECRETARY OF COMMERCE,
Washington D.C., March 22, 1965.

HON. JAMES O. EASTLAND,
Chairman, Senate Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR Mr. CHAIRMAN: This is in reply to your telegram of March 20 requesting data relating to title VIII of the Civil Rights Act of 1964.

We have not submitted any information to the Civil Rights Commission pursuant to title VIII nor have we compiled any statistics under this title.

The 1964 act directed the Secretary of Commerce to undertake a survey to compile registration and voting statistics in areas specified by the Civil Rights Commission. The Commission requested that surveys be undertaken in the States of Alabama, Louisiana, and Mississippi, and noted that they might wish to have surveys in other selected areas at a later date. Accordingly, an appropriation request for the necessary funds was submitted as part of the 1965 supplemental budget estimate. Hearings were held before the House Appropriations Committee on February 15, 1965. To the best of our knowledge no action has yet been taken on this request.

If I can be of further assistance in this matter, please let me know.

Sincerely yours,

JOHN T. CONNOR,
Secretary of Commerce.

HON. A. ROSS ECKLES,
Director, Bureau of the Census,
Department of Commerce, Washington, D.C.

Section 3(a) of S. 1564 provides "No person shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device, in any State or in any political subdivision of a State which (1) the Attorney General determines maintained on November 1, 1964, any test or device as a qualification for voting, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964."

The Senate Judiciary Committee is desirous of obtaining from you the entire number of persons of voting age who were residents on November 1, 1964, of every State and the entire number of persons of voting age who were residents of each and every political subdivision of such State on November 1, 1964. It would also like to be supplied with the total number of individuals of voting age in every State who were registered to vote on November 1, 1964, and the total number of individuals in each and every political subdivision of such State who were registered to vote on November 1, 1964. The committee further requests that you supply to it the total vote that was cast in the presidential election of November 1964 in every State and the breakdown of the vote in every political subdivision of each and every State.

The committee will commence hearings on this bill on Tuesday, March 23. The Attorney General will be the lead-off witness and I am confident that the committee will wish to take testimony from you subsequent to that of the Attorney General or other Cabinet members. We will appreciate it if you hold yourself in readiness for such appearance and supply the information requested above as expeditiously as possible since the Senate is requiring that the bill be reported not later than April 9.

JAMES O. EASTLAND,
Chairman, Senate Committee on the Judiciary.

U.S. DEPARTMENT OF COMMERCE,
BUREAU OF THE CENSUS,
Washington, D.U., March 23, 1965.

HON. JAMES O. EASTLAND,
Chairman, Senate Committee on the Judiciary,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In response to your telegram of March 22, I am enclosing a table showing, by States, the estimated population of voting age as of

Population of voting age and votes cast for President, November 1964

[Figures in thousands. Population base includes Armed Forces in State. Voting age is 21-plus for a States, except 18-plus for Georgia and Kentucky, 19-plus for Alaska, and 20-plus for Hawaii]

Code No.	States	Population of voting age	Votes cast for President	Percent casting votes ¹
	United States, total.....	112,931	70,642	62.0
	New England:			
1120	Maine.....	561	281	65.6
1220	New Hampshire.....	376	268	72.8
1346	Vermont.....	240	163	67.9
1422	Massachusetts.....	3,200	2,345	71.3
1540	Rhode Island.....	568	390	68.6
1607	Connecticut.....	1,698	1,219	71.8
	Middle Atlantic:			
2133	New York.....	11,350	7,166	63.3
2281	New Jersey.....	4,147	2,847	68.6
2339	Pennsylvania.....	7,090	4,823	68.1
	East North Central:			
3189	Ohio.....	5,960	3,909	65.6
3215	Indiana.....	2,826	2,082	74.0
3314	Illinois.....	6,358	4,703	74.0
3428	Michigan.....	4,647	3,203	68.9
3550	Wisconsin.....	2,391	1,692	70.8
	West North Central:			
4124	Minnesota.....	2,024	1,534	76.8
4216	Iowa.....	1,638	1,185	72.8
4326	Missouri.....	2,696	1,818	67.4
4435	North Dakota.....	256	256	72.2
4542	South Dakota.....	404	293	72.6
4628	Nebraska.....	877	584	66.6
4717	Kansas.....	1,323	886	64.8
	South Atlantic:			
5108	Delaware.....	293	201	71.0
5221	Maryland.....	1,995	1,116	56.0
5308	District of Columbia.....	517	199	38.4
5447	Virginia.....	2,541	1,042	41.0
5549	West Virginia.....	1,033	792	75.2
5684	North Carolina.....	2,783	1,425	51.8
5741	South Carolina.....	1,890	625	33.0
5811	Georgia.....	2,636	1,139	43.2
5910	Florida.....	5,516	1,854	32.8
	East South Central:			
6118	Kentucky.....	1,976	1,046	52.9
6243	Tennessee.....	2,229	1,144	51.1
6301	Alabama.....	1,915	690	36.0
6428	Mississippi.....	1,248	409	32.9
	West South Central:			
7104	Arkansas.....	1,124	560	49.8
7210	Louisiana.....	1,893	896	47.8
7387	Oklahoma.....	1,493	932	62.5
7444	Texas.....	5,022	2,427	44.4
	Mountain:			
8127	Montana.....	399	279	69.9
8218	Idaho.....	396	292	73.8
8301	Wyoming.....	195	143	73.2
8406	Colorado.....	1,142	777	68.0
8532	New Mexico.....	514	328	63.7
8608	Arizona.....	879	481	54.7
8745	Utah.....	822	401	48.9
8829	Nevada.....	244	135	55.8
	Pacific:			
9128	Washington.....	1,769	1,255	71.5
9238	Oregon.....	1,130	780	69.0
9305	California.....	10,916	7,058	64.7
9402	Alaska.....	138	67	48.7
9512	Hawaii.....	345	207	60.0

¹ Based on unrounded figures.

Source: Votes cast compiled by Governmental Affairs Institute, Washington, D.C., from official State sources.

November 1, 1964, the number of votes cast for President in November 1964, and the percentage which the number of votes cast is of the population of voting age.

In accordance with standard census procedure, the population of voting age in each State includes the members of the Armed Forces of voting age who are stationed in that State. If the members of the Armed Forces were not included in the population of voting age, the percentage shown for Alaska would be 62.3 instead of 48.7. However, in no other State in which the percentage is below 50 would the removal of the Armed Forces from the population of voting age raise the percentage above 50.

We are compiling figures by counties showing the number of persons who voted for President in November 1964. It will be several days before that work is completed. We will transmit the figures to you as soon as possible. However, we do not have available estimates of the number of persons of voting age by county as of November 1964. The preparation of a complete set of such estimates would require several months and additional resources. Since many counties clearly are above or below the 50-percent mark, it is our understanding that detailed estimates may be required only for certain counties.

The Bureau of the Census has not compiled any figures on registration. These figures are not readily available in State offices and a good deal of work would have to be done to get them on a county basis. We understand that the Civil Rights Commission has assembled some figures on registration by counties, though in some instances these figures relate to an earlier date than November 1964.

As we understand the wording of the bill, the statistics concerning voting are adequate for the determinations which are to be made. If fewer than 50 percent of the voting age population are registered, it is clear that fewer than 50 percent would have voted, except in those cases in which registration is not required. On the other hand, even though more than 50 percent of the population of voting age was registered, the provisions of the bill would apply if fewer than 50 percent voted.

We will be glad to be available for hearings whenever you request. If there is further assistance that we can render in this connection, please let us know.

Sincerely yours,

A. ROSS ECKLER,

Acting Director, Bureau of the Census.

The CHAIRMAN. Mr. Eckler?

STATEMENT OF A. ROSS ECKLER, ACTING DIRECTOR, BUREAU OF THE CENSUS; ACCOMPANIED BY DR. CONRAD TAEUBER AND MR. ZITTER

The CHAIRMAN. Mr. Eckler, you are Director of the Bureau of the Census?

Mr. ECKLER. Acting Director, Mr. Chairman.

The CHAIRMAN. Will you identify the gentlemen with you?

Mr. ECKLER. I have with me Dr. Conrad Taeuber, who is Assistant Director in charge of demographic fields.

The CHAIRMAN. You may proceed.

Mr. ECKLER. Mr. Chairman, with your permission, I shall read a brief statement and then be available for questions.

Under the provisions of the Voting Rights Act of 1965, the Director of the Census has responsibility for determining for certain States or political subdivisions of States whether less than 50 percent of the persons of voting age residing therein on November 1, 1964, were registered on that date, or whether less than 50 percent voted in the presidential election of November 1964. The act further provides that determinations made by the Director of the Census under this provision shall be final and effective upon publication in the Federal Register.

We are prepared to undertake the responsibilities involved in making the determinations called for in the Voting Rights Act of 1965. In doing so, the Census Bureau will be serving in its usual capacity as a technical agency and not in any sense as a policy-making or policy-determining agency. In this respect, our role would be similar to that established in the legislation providing for the reapportionment of the Congress each 10 years, in legislation relating to clerk hire of Members of the House of Representatives, in title VIII of the Civil Rights Act enacted last year, and in certain other legislation.

We welcome this opportunity to appear before this committee, and I will be pleased to answer questions to the best of my ability regarding data the Bureau would expect to use and the methods that would be most appropriate in the discharge of our responsibilities.

Thank you, very much.

The CHAIRMAN. Do you have the population of voting age people of the counties and States affected by this bill?

Mr. ECKLER. No, sir, we do not for the date of November 1, 1964. We would have that information for the date of the last decennial census, April 1, 1960.

The CHAIRMAN. You do not have it for 1964?

Mr. ECKLER. The preparation of the statements for 1964 would be work that is still to be done. We do have it for States.

The CHAIRMAN. How did you figure it?

Mr. ECKLER. We have long had procedures for preparing statements of the population at dates later than the last census. There is widespread interest in what has happened to the population of States, so we use methods which have been developed over the years, taking account of changes due to births, changes due to deaths, changes due to internal migration of population.

The CHAIRMAN. Well, now, those are estimates, you say?

Mr. ECKLER. Those are estimates or projections, based upon the best methods that we know how to use.

The CHAIRMAN. Well, it is an estimate.

Mr. ECKLER. It is an estimate.

The CHAIRMAN. All right, now, how do you estimate?

Mr. ECKLER. How do we estimate?

The CHAIRMAN. Yes.

Mr. ECKLER. We would use—we start at the base point divided by the last complete census. We have information for the areas on the births that have taken place since that time. We have information on the deaths that have occurred. We have information by a variety of means on migrations of population.

The CHAIRMAN. All right, how do you get those estimates on migration of population?

Mr. ECKLER. One method of obtaining this would be through the changes in the school attendance of the population. If the school attendance figures are substantially higher, it provides an occasion of in-migration into that area.

We also make use of certain other occasions of population change as we have improved our methods for this work, occasions such as the motor vehicle registration, the vote cast, employment, and other occasions of population change. These are by procedures which we have developed and improved. They have enabled us to get very useful

and satisfactory estimates of the population for States and in some smaller areas.

The CHAIRMAN. Senator Ervin?

Senator ERVIN. I understand that you are compiling a record of the votes of each county in the United States?

Mr. ECKLER. Yes, sir, Mr. Senator, we are obtaining that information. It is available in official form in Washington. The Governmental Affairs Institute has long been active in assembling the official reports from the States on the vote cast for counties and we are getting the information through their courtesy and we expect to supply to the committee in response to the chairman's request information on that subject.

Senator ERVIN. Do you not know that there are two States out of the six involved which would be covered by this formula in this bill; namely, the States of Mississippi and Virginia, which have their State elections and the local elections in odd years rather than the presidential years?

Mr. ECKLER. I am not personally acquainted with the details on the voting arrangements in the several States, Mr. Senator. I do know that this varies from State to State. What we have is the presidential vote, vote for the presidential election, in 1964.

Senator ERVIN. Where do you live?

Mr. ECKLER. I beg your pardon?

Senator ERVIN. Where is your home?

Mr. ECKLER. New York State.

Senator ERVIN. But you live in the District?

Mr. ECKLER. That is right, sir.

Senator ERVIN. I thought maybe you might live over in Virginia. That is the reason for that question. I know that Virginia has its election for Governor and the State legislature, all local offices, in odd years and not in the presidential year. Do you believe that it is fair to place upon Virginia a test that applies only to a presidential year when nobody is running except candidates for President and candidates for U.S. Senate and candidates for the House of Representatives?

Mr. ECKLER. Mr. Senator, I regard that as something which the Attorney General ought to comment on. It is outside of my competence to comment on the applicability of this particular feature.

Senator ERVIN. Well, do you know that from your observation that the people who really get voters to come out to vote are the ones running for local office? They are the ones who spend the time and energy and the money to get voters to come out and vote, aren't they?

Mr. ECKLER. Again, I think it is outside my competence, although it would seem to me—

Senator ERVIN. That is within the competence of any intelligent man.

Mr. ECKLER. It would seem to me that the amount of interest which attaches to a presidential election is extremely great and that this is an outstanding event. I assume that these other elections, in many cases, have extremely important local issues and do bring out a great deal of interest and a great deal of local enthusiasm.

The CHAIRMAN. Of course, you know, do you not, that the vote is gotten out by the local candidates. You know that, do you not?

Mr. ECKLER. I assume that—again, I am not an expert on voting or on what brings out the vote. I assume that in some cases, the local candidate is extremely important. In other cases, a Governor may be extremely important, it may be an important fight. It seems to me always the President is an important election.

Senator ERVIN. Do you not know that local candidates and their friends haul people out to their polls. You never saw a President haul people out to the polls on election day, did you?

Mr. ECKLER. No, sir.

Senator HART. Mr. Eckler, for your comfort, in Michigan, the uniformity of the election in a Presidential year brings out many more people than in the off year, although we have the governor running both times.

Mr. ECKLER. I believe that is also true in New York State.

Senator KENNEDY. Mr. Eckler, that is substantially the same in Massachusetts.

Senator HART. Mr. Eckler, you are familiar with the charge that would be imposed upon the Bureau of the Census by the Senate bill 1564, the legislation we are considering.

Mr. ECKLER. Yes, sir, Mr. Senator.

Senator HART. It would require that you determine the percentage of persons of voting age residing in a State or a county and the percentage of persons who voted in the November election last year?

Mr. ECKLER. Yes, sir.

Senator HART. Do you have any doubt about the capacity of the Bureau accurately to report those figures?

Mr. ECKLER. We believe that we can provide that information in acceptable form for the purposes of the bill. There will be some work we need to do which we have not done. We have provided the House an estimate of the cost of the additional work, but we believe we can do it satisfactorily; yes, sir.

Senator HART. What, if anything, have you done under the charge of title VIII of last year's civil rights bill?

Mr. ECKLER. Our work under that has been limited to the preparation of a statement of the cost of doing certain work which the Civil Rights Commission transmitted to us as a request. Title VIII does provide that we do work in areas specified by the Civil Rights Commission. They did so specify. We prepared a statement which was submitted to the House and submitted it to the Congress. We had hearings before the House about a month and a half ago and we are awaiting further action.

Senator HART. Thank you.

Senator KENNEDY. Mr. Eckler, if the Bureau of the Census were asked to survey a given political subdivision to determine the registration on the basis of color, what factors would determine the cost?

Mr. ECKLER. The cost?

Senator KENNEDY. And time necessary to make the compilation, and is there a significant difference between a subdivision, a city, or a county, of 22,000 and one of 9,000?

Mr. ECKLER. Do I understand the question to refer to a survey or a census in essence?

Senator KENNEDY. That is right.

Mr. ECKLER. The cost would depend very directly upon the population of the area to be covered. That is the most important determining element in such a job. If we had the necessary pretesting of this, the developing of procedures and so forth, which might take a number of months, the carrying out of the survey once that were established—and this is assuming not that this were on a wholesale basis, but scattered—if this became a very extensive load so that it was going on in a great many areas at one time, then we face a problem of organization that is quite substantial. But if these were scattered operations similar to the special censuses which we conduct, presumably the work in a particular area would be—perhaps we could work out a way that we could get to it within the period of 60 to 90 days after the time that the request was made.

The measurement of this information may involve certain complications. If it refers to November 1964, and if, under the provisions of this particular bill, something like registrars had started to operate and registration was going on, there might be confusion as to whether the information referred to the 1964 situation or to registration that had taken place since then. I think there are some problems of that sort that might require a special study and testing.

Senator KENNEDY. I am thinking in terms of the number of political subdivisions. You have been charged in title VIII, which Senator Hart mentioned, in the 1964 bill—you have extensive responsibilities under this proposed legislation. I am wondering what is going to be the time factor, when are we going to be able to have these figures in order to make the triggering devices of this legislation active? If it is a question of cost, do you have recommendations which you ought to be considering in order to make this a realistic kind of proposal? And is it a question of additional personnel? We should know this as well.

Or are you completely satisfied that under the 1964 act and the charges under 3(A), that you will be able to fulfill this mission without additional personnel or additional appropriation?

Mr. ECKLER. Senator Kennedy, as far as the 1964 act is concerned, there is a specific request so that we assume that whatever work is done there would be on the basis of appropriations made and on the basis of timing which we indicated to the Appropriations Committee.

The ability of the time required, of course—the time of the availability depends very directly upon when the money becomes available. As was pointed out at the time we appeared before the committee, something like 6 months of testing time is required and then after that, several months for the collection. So that would put the availability of that information into the early part of 1966. I think that is the most favorable assumption of timing.

As far as the present Voting Rights Act is concerned, we have assumed thus far and the discussions seem to confirm this, that what is involved is a determination of a relationship on the basis of projections of population for counties in States that are involved. The six States in which—which come under the voting device criteria and which have less than 50 percent, it seems to be an interpretation that those as a whole would be certified and that work on the individual counties might not be necessary. Outside of that, there would be a

considerable number of counties in other States that met their criteria where we would need to prepare these projections of county populations.

The sum required, which we estimated and made available to the House Committee was a total of about \$75,000. It would take 2 or 3 months, perhaps, to do that work. So this is not such a long-drawn-out job as would be involved if surveys were to be taken to determine a population figure.

Senator KENNEDY. Do I understand you correctly that you suggest that with the political subdivisions as defined in this legislation, that you will be able to ascertain accurately what the breakdown is with regard to white and nonwhite in a period of approximately 90 days? I do not want to pin you down, but I want to ascertain that.

Mr. ECKLER. By means of a census?

Senator KENNEDY. By means of a census.

Mr. ECKLER. This would be true only if we had done the necessary testing in advance of the techniques for doing this. This is a kind of survey which we have not previously done in exactly this form.

Senator KENNEDY. Now, would you describe this? What is the necessary testing that must be done in advance?

Mr. ECKLER. We should want to develop a series of questions, a questionnaire, in order to get this information that is needed, and we would want to use it in the field in several different situations in order to evaluate the ability of this particular questionnaire and the techniques to elicit reliable information. One of the problems, as has been brought out before this in other testimony, is that there is some tendency in surveys of this sort for people to state that they are registered or to state that they voted to a greater degree than the actual registration would bear out. We need to do the best we can to find procedures which get the most nearly accurate response possible.

Senator KENNEDY. Well, now, under existing procedures, what would be the time it would take to ascertain the necessary information under 3(a)?

Mr. ECKLER. Under the procedures and the responsibilities that we assume fall upon us in the present wording, this would not involve any canvassing of population. This would involve using the 1960 records and birth and death figures, internal migration, other information, in order to prepare statements of the voting age population of the necessary counties.

Senator KENNEDY. How long would that take?

Mr. ECKLER. Perhaps 2 or 3 months after the funds were provided.

Senator KENNEDY. Well, so, under any estimate, you feel the Bureau of Census can make an accurate determination 2 or 3 months after the funds are available in these political subdivisions of 3(a).

Mr. ECKLER. Yes, sir.

Senator KENNEDY. Now, if this legislation were to be expanded to include other political subdivisions which have not been outlined in this bill, but would include areas in which there was a significant question as to the number of nonwhites which were registered to vote, would you feel that these additional areas or political subdivisions which perhaps might be included in this legislation—would you feel that a similar determination could be made of these political subdivisions in that same period of time? Or would this entail additional—

as I imagine it would to some extent—personnel and appropriations to do the job?

Mr. ECKLER. Senator Kennedy, I assume that these political subdivisions in some instances would be counties rather than smaller areas.

Senator ERVIN (presiding). If I may interrupt, that is one of the things which shows that this bill was brought in great haste. No one took the pains to define a political subdivision. A political subdivision is not confined to counties. It would include all the municipalities, the cities and towns, the school districts, it would include the wards and where the town or city was divided into several wards, it would include each of those wards. In North Carolina, it would include hundreds of special tax districts and school districts where people vote. If it would take 2 or 3 months to get the figures for the counties, it would probably take you 2 or 3 years to get the rest of them for the smaller subdivisions.

Senator KENNEDY. Mr. Eckler, we have had the Attorney General define political subdivision, certainly to my satisfaction and I feel to others as well, and I think for purposes of your response, you have outlined it to my general satisfaction. What I was attempting to ascertain is whether you felt if there were a modest increase in the total numbers of areas of counties or political subdivisions that were included in this legislation, you feel that you would be able to meet these additional responsibilities?

Mr. ECKLER. Well, Senator Kennedy, in terms of that question, I believe that the additional number would not create a very serious further load. While there might be some additional sum that would be required, I do not think that the timing that I suggested before would be particularly changed. I think this would be feasible, because these are more scattered situations, I take it, pockets where problems exist and I think we could include those.

You did mention nonwhite. I assume you meant merely that the total would be determined and that the low percentage is due to the fact that a significant number of nonwhites are actually not registering and not voting. We would not, by means of this projection process that I described, be able to get a color subdivision.

Senator KENNEDY. That is correct.

Mr. ECKLER. But I think the answer to your question is that this would not seem to add significantly to the problem outlined.

Senator KENNEDY. Could I ask you, what has been your experience on the validity of figures which have been made available by several of the States—as to their accuracy and as to their breakdown on race and other factors?

Mr. ECKLER. Senator Kennedy, we have given, of course, a great deal of attention to this matter of improving these projections. We were looking at the record. In terms of the average difference between the actual census and the projection on the basis of the current methods, it appears to be something like a 1-percent average deviation over a period of 10 years. Now, this is a period shorter than 10 years, so that the average deviation should be smaller, significantly, than the 1 percent. Furthermore, I think that many of these States which are involved in the estimation work here are States which have had a significantly better than average record on estimates in the past.

There are sizable States which make the reliability greater than States in which rapid growth or extremely rapid changes have not taken place. I think that this indicates that the results would be quite satisfactory for the purpose.

Senator KENNEDY. So I understand your answer to include the accuracy of the State figures as they apply to race and color as well as total numbers?

Mr. ECKLER. It would apply to total. We are not proposing, we are not required, as I understand it, under this bill to go into race and color in our projections. It would be a total for the State or a total for the county, series of counties, that we make determination. But it would not involve us in getting an estimate of the color. We do not have experience as to how close we would come on that. I should think the difficulties would be considerably greater.

Senator KENNEDY. Well, do you think you could ascertain those figures as well if you were given that responsibility on the basis of race and color?

Mr. ECKLER. By projections?

Senator KENNEDY. Yes.

Mr. ECKLER. I am afraid we could not.

Senator KENNEDY. Well, if you make the determination, what factors would make it difficult to make the determination on the basis of race or color in a given political subdivision?

Mr. ECKLER. If we were going to do that, I think the preferable route would be to use the other route that your earlier questions were leading toward, a survey of the actual area, and getting an up-to-date determination.

Senator KENNEDY. Under a survey, you could make this determination, could you not?

Mr. ECKLER. Yes, sir.

Senator KENNEDY. And under a survey, that time factor is still fairly constant, is it not?

Mr. ECKLER. Assuming that the testing has been done, and assuming that this does not become a mass operation so that a great part of the country is involved in this sort of work all at one time. But in our special censuses, we are able to do a great number of them. But if we get an extreme concentration at one time, then we have problems of staffing for that.

Senator KENNEDY. I certainly understand, but I think within the general definition of my question, you feel that those figures could be ascertained accurately and fairly expeditiously am I correct?

Mr. ECKLER. On the assumption that this does not bring this tremendous concentration, yes, sir.

Senator KENNEDY. Thank you, Mr. Eckler.

Senator FONG. Mr. Eckler, under section 3(a), you are, as head of the Census Bureau, Director of the Census, you are to determine whether 50 percent of the adult population has voted or has been registered. You are to determine that. And you are to certify that to the Attorney General; is that correct?

Mr. ECKLER. That is right, Mr. Senator.

Senator FONG. Under section 4(b), it says that a determination of the certification of the Attorney General or of the Director of the Census, under section 3 or 4, shall be final and effective upon publica-

tion of the Federal Register. How do you anticipate putting that into action? Do you anticipate that you will certify it to the Attorney General or you will take the initiative and present that to the Federal Register?

Mr. ECKLER. I should assume this is something we would want to work out in consultation with the Justice Department as to the best procedure. Whether we would send it to him first and then put it in the Register afterward or whether it would be simultaneous, we have not crossed that particular bridge yet, Senator Fong.

Senator FONG. Are you satisfied with the wording of 4(b)?

Mr. ECKLER. I did not think there was any trouble with it as far as I could see. I should think it could be put in by either the Attorney General or the Census. I think it is acceptable wording as far as I can see.

Senator FONG. You will collaborate with him; is that correct?

Mr. ECKLER. Yes, sir; we certainly shall do so.

Senator FONG. You have prepared for the committee, Mr. Eckler, a chart of the voting, of the population of voting age of the various States, the votes cast for President and the percent casting votes. I notice that the last State here is Hawaii and you have a percent of 52.5 percent casting votes in the State of Hawaii and 51.8 percent casting votes in the State of North Carolina, showing that Hawaii only exceeded the very great State of North Carolina, which my distinguished colleague here has the honor of representing, by only seven-tenths of 1 percent. That gives a very wrong impression of the State of Hawaii. I hate to be representing a State that only votes 52.5 percent. Do you have, or do you show in your census the number of people who may be connected with the military service who have domiciles elsewhere, who have voting privileges elsewhere, who do not care to vote in the State? Do you have such figures?

Mr. ECKLER. We have such figures, Senator Fong, on the military and we can supply for Hawaii or any State the information on this so that the effect of the inclusion of the military on this percentage would be brought out. I believe that if you based the figures on the population excluding the military, the Hawaii percentage would be 60.1.

Senator FONG. And if you were to exclude the aliens who are in the State of Hawaii, which amounts to approximately 41,000 people, I think your percent would come up to almost 90 percent; would it not?

Mr. ECKLER. We would have to base that on the estimate of the number of aliens from sources other than our own. But it would be quite possible to have an estimate of the number of aliens from some source and to make the calculation. I am not prepared to substantiate it right out of my present information. But it would certainly raise the percentage substantially.

Senator FONG. From the figures I have here, you have a population of voting age of 345,000. The votes cast for President were 207,000 and the percentage was 52.5 percent. I have the military population of Hawaii at around 67,000 people. There are another 67,000 people who are dependents, wives and children of the military, and with approximately 41,000 aliens, it would give Hawaii a voting population of approximately—well, it would have a registered voting population of 232,000, which is almost 100 percent of the people eligible to vote;

89 percent or 90 percent of the people cast a ballot of those registered in the election, which brings it down to a figure of 207,000. I was just wondering whether you would be able to present those figures so that the picture would not be distorted here.

Mr. ECKLER. Senator Fong, we would not be in a position to present all these figures, because we do not have the number of aliens for the various States. But we could present the figures for the military excluded if there were a desire to look at the effect this would have upon the percentage. Of course, it is possible for any State to make the deductions of the other kinds to show that in terms of people eligible to vote, the percentages are significantly higher.

Senator FONG. Thank you.

May I ask that these figures be included in your census figures?

Mr. ECKLER. We shall include these to the best of our ability, Senator Fong.

Senator FONG. Thank you.

Senator KENNEDY. Mr. Eckler, are you aware of the figures which have been collected by the Civil Rights Commission?

Mr. ECKLER. I have seen the material which Father Hesburg presented before the House Judiciary Committee.

Senator KENNEDY. Have you seen the breakdown of their figures—I am thinking of the registration figures by State and county which include Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia?

Mr. ECKLER. Yes, sir.

Senator KENNEDY. Would you give us any opinion as to their accuracy?

Mr. ECKLER. I do not think that I could do anything to add to that information that Father Hesburg presented or that the Civil Rights Commission presented. They indicated that these are obtained from a variety of sources—newspapers and in some cases from official records. There is a very substantial difficulty in getting full information on this subject which is comparable from State to State. These States are not all comparable. I am not in a position to comment on the accuracy of these, Senator Kennedy. I think that they, themselves, indicated the limitations quite specifically and I assume that they believe that despite these limitations, they are serviceable in indicating relationships and existing situations.

Senator KENNEDY. Well, out of your long experience—how many years have you been in the field?

Mr. ECKLER. I have been with the Census Bureau about 25 years, Senator Kennedy.

Senator KENNEDY. Would you say in the light of that kind of experience, these figures are pretty much in line with what the general understanding of these areas is in formulating—

Senator ERVIN. I do not believe there is any evidence that Mr. Eckler has any general understanding. He did not say that.

Senator KENNEDY. Mr. Eckler can respond. He has been, I feel, quite well given to understand that he can express an opinion if he would like to express an opinion.

Mr. ECKLER. I think, Senator Kennedy, what I could say is that my general background and contacts do not suggest any reasons

for discrediting these figures as a reasonable indication of the extent to which registration and voting has taken place.

Senator KENNEDY. Thank you.

Senator ERVIN. I might also add that your background and experience does not suggest that you can either approve or disapprove the accuracy of those figures. Is that not so?

Mr. ECKLER. I was not attempting to address myself to the accuracy of the particular figures, but as a general indication of the relationships and situations, I believe that—many of these are based upon official records and I noted, as I looked over this, that the record insofar as it is based upon official records, seemed to be consistent in general pattern with that which was based upon the other kinds of information.

Senator ERVIN. You pointed out a while ago, though, that the Civil Rights Commission had stated itself it got these figures from a variety of sources. You also stated that these figures are subject to many limitations, or some limitations, did you not?

Mr. ECKLER. They indicated that and I would accept that as a valid description. But I think it could be said that still—there are many statistical figures which can be presented which have limitations.

Senator ERVIN. Yes, that is true.

Mr. ECKLER. Which still are useful in describing the situation for the purpose of legislation or action.

Senator ERVIN. As my very distinguished friend from Hawaii has just very well demonstrated, relying on figures to show the truth is a very deceptive thing. This has no application to anybody, but it illustrates a point.

Down in my country, an old mountaineer has been buying his groceries on credit. He went in to pay his grocery bill and the storekeeper told him the amount of the grocery bill. It was more than the mountaineer thought it ought to be and he protested. The storekeeper brought out his account books and laid them on the counter and said, "There are the figures, and you know figures do not lie."

The mountaineer said, "I know figures do not lie, but liars sure do figure."

As the Senator from Hawaii so well pointed out, the figures in respect to the percentage of people entitled to vote in Hawaii are very inaccurate here, because it includes thousands of members of the Armed Forces and their dependents.

Now, can you supply the figures for the number of men in the Armed Forces and their dependents stationed at Seymour Johnson Air Force Base in Wayne County, N.C., which is one of these 34 counties of North Carolina that would be deprived of a part of their sovereignty on the basis of some figures?

Mr. ECKLER. We can supply the Armed Forces figures, Senator Ervin.

Senator ERVIN. Can you supply the number of their dependents?

Mr. ECKLER. Census information does not enable us to do that; no, sir.

Senator ERVIN. There is another county which is said to have the greatest Army camp in the world, Cumberland County, N.C., which contains Fort Bragg. They include the Army people in its population. According to my information, there have been as many as 40,000

people stationed there. The whole population of the county contains, I believe 86,000—maybe I am wrong in that—people of voting age. I would like to get the same kind of figures with regard to the military base at Cherry Point, in Craven County. Here are three of these counties which, like Hawaii, these figures do not accurately reflect voting percentages, because the military people normally do not vote there.

Now, this subsection 4(b) says that determination or certification of the Attorney General or the Director of the Census under 3 or 4 shall be final and effective upon publication in the Federal Register.

That gives the Attorney General and the Director of the Census the same infallibility that the Almighty has, does it not? It gives their certification, I will say, not them, but their certification, the same infallibility that the Almighty has. It cannot be contested.

Mr. ECKLER. Senator Ervin, I am not in a position, I think, to comment upon the reasons for drafting the bill in this form. I think we are honored that this is expressed in this fashion, but I am not in a position to comment upon—

Senator ERVIN. Now, part of this information about the voting age population on the 1st of November 1964 is going to be necessarily based upon projections and estimates; is it not?

Mr. ECKLER. It will be based upon projections from the 1960 census by methods I have described; yes, sir, Mr. Senator.

Senator ERVIN. There certainly is room for some inaccuracies in such projections and estimates, is there not?

Mr. ECKLER. No, I think that there is room for some degree of—this is true of any statistics that you want to talk about.

Senator ERVIN. Yes, sir, and yet this is going to be final, nobody can dispute it.

Mr. ECKLER. I hope that the—

Senator ERVIN. In other words, even if there are inaccuracies, it is not disputable in any court procedure?

Mr. ECKLER. I cannot speak for the Director of the Census who may be responsible at the time this bill becomes effective, but I should think a Director of the Census would take this responsibility with great seriousness.

Senator ERVIN. I have no doubt of that.

Mr. ECKLER. And would satisfy himself of the importance of the task and would not make the determination lightly or would not make a determination if he believed that this was not correct.

Senator ERVIN. But, nevertheless, if the bill were passed in this form, it would make a question of fact indisputable by an act of Congress. You could not even contradict it if you could show it was inaccurate.

Mr. ECKLER. If it could be shown it were inaccurate, the Census has always stood ready to review charges of inaccuracy or incompleteness and too, if necessary, make a change.

Senator ERVIN. They could not even make their own change. This says final. Even if they found out it was inaccurate, they could not change it. You could not disprove it in court. This is another illustration of the character of this bill.

Now, I believe you stated that you have no figure, and that the Bureau of the Census does not compile figures about registration, does it?

Mr. ECKLER. No, sir; it does not.

Senator ERVIN. So it would have to start from scratch on that as far as its work is concerned.

Mr. ECKLER. Well, Senator Ervin, it would seem to us as we study this bill that although both registration and voting are mentioned, it is not necessary to assemble the registration figures since the registration figures would always be higher than the vote cast figures.

Senator ERVIN. Yes, sir. That is true.

Mr. ECKLER. Therefore, if a place, a political subdivision, or a State failed to qualify, failed to be under 50 percent on the voting criteria, it could not possibly qualify under 50 percent on the registration criteria. So it seems to us that it is not necessary for us to undertake the assembly of information on registration.

Senator ERVIN. And yet how are you going to make a certification? The bill provides that the Bureau of the Director of the Census must determine that less than 50 percent of the persons of voting age residing therein were registered on November 1, 1964. To comply with this law, you would have to do it, would you not?

Mr. ECKLER. I do not interpret, Senator Ervin, that we need to determine that they were—the wording of the legislation is that 50 percent were registered or voted. Now, if we determine, if we concentrate on the counties in which less than 50 percent voted, it seems to me impossible that we would miss any in which the percentage would be, of the registrants would be less than 50.

Senator ERVIN. Yes, sir, but that is not what the statute says the Director of the Census should do. It says the Director of the Census must determine whether less than 50 percent of the people of voting age residing therein were registered on November 1, 1964.

Mr. ECKLER. If I may comment, Senator Ervin, that is not the end of the sentence.

Senator ERVIN. No, but there is an "or" there. That is one of the things you have to certify and then you have to certify in an alternative proposition.

Mr. ECKLER. I suppose that this is something for the Attorney General to give advice on. But I certainly have worked on the assumption that we do not need to do both of these tasks, that the objective of the bill is to identify counties which meet a certain criteria.

Senator ERVIN. The Director of the Census has to determine two things. The first is that less than 50 percent of the persons of voting age residing in a particular State or political subdivision were registered on November 1, 1964. In other words, they want to catch them either way. If 100 percent were registered without discrimination, they want to catch a county or a State under the second section. If more than 50 percent, or as much as 50 percent were not registered, they want to catch them under the other section. It will catch them on either horn.

Now, how long will it take to find out or compile registration figures in those States where they do not require registration?

Mr. ECKLER. Senator Ervin, if this bill requires a determination of registration statistics, there are very serious difficulties, as you know from an earlier exchange. It does not seem to me that there is any possibility that the determination that we make with respect to voting would not cover all of the certifications that could be possible under

this bill, because there could be no State which would qualify for the registration only. If it qualifies for the registration, it must, without any doubt, qualify under the voting criteria. Therefore, it seems to me that we do not need to address ourselves at all to the registration figures, that the voting figures give us completely responsive answer to our duties under this bill.

Senator ERVIN. So when you stated it would take 2 or 3 months to make projections and estimates, you were only thinking about projections and estimates as to population?

Mr. ECKLER. That is correct, sir.

Senator ERVIN. So under the interpretation you placed as to the primary objective of the bill, a State could register 100 percent of its adult population without any discrimination and still be brought under this bill if less than 50 percent of that 100 percent went out to vote?

Mr. ECKLER. That is my interpretation of the bill, Senator.

Senator ERVIN. Do you know any way that a State or county can compel people to go out and vote?

Mr. ECKLER. I am not aware of it.

Senator ERVIN. I am not either. There is a great deal of apathy in this country, is there not, about voting?

Mr. ECKLER. It would seem to me, sir, that there is a good deal.

Senator ERVIN. The Attorney General stated here that the national average is not higher than 61 percent of the total adult population. That is a pretty low—it would indicate that at least 39 percent of the people did not care enough about voting to go out and vote, would it not?

Mr. ECKLER. I think we all agree that this ought to be brought to a higher level if possible.

Senator ERVIN. And the figures show that even in the great State of Texas, where they had a hot Senator's race, a hot Governor's race, and a native son running for President in 1964, only 44.4 percent of the people went out to vote, notwithstanding the fact that they are not hampered by a literacy test requirement.

Senator DIRKSEN. May I interpose?

Senator ERVIN. Yes.

Senator DIRKSEN. Mr. Eckler, of course, all that is of no concern of yours. You are not a policymaking body. You are a statistical factfinding body and you do not have to be bothered about the two horns of this dilemma or this Texas steer. You either ascertain whether less than 50 percent registered or less than 50 percent voted. That is all you have to do. Whatever your views may be on policy would be of no concern so far as this bill is concerned, and certainly would be of no concern to the Census Bureau.

Mr. ECKLER. That is correct.

Senator ERVIN. In other words, you and the Senator from Illinois agree that the Director of the Census does not need to determine that less than 50 percent of the persons of voting age residing in an area were registered in 1964.

Mr. ECKLER. I am sorry, I did not understand the question.

Senator ERVIN. In other words, you agree with the Senator from Illinois who says that there is no need to pay attention to the provision of this bill which says the Director of the Census is to determine that

less than 50 percent of the people of voting age resided in a particular State or particular subdivision registered on November 1, 1964.

Mr. ECKLER. I think my conclusion is that the phrase as a whole needs to be looked at, part 2, which has this or this, and that the criterion determined by either one is what we concern ourselves with.

Senator ERVIN. The Bureau of the Census is not prepared to make any certification at all on the first alternative, is it?

Mr. ECKLER. The first alternative, if we had to do that, we do not have the figures available. They are in some cases not available anywhere as far as I know.

Senator ERVIN. So we might as well for all practical purposes strike that provision out of the act.

Mr. ECKLER. There may be some other provision that it serves. For the purpose of our statistics, I do not see any reason for it.

Senator ERVIN. Yes.

Senator DIRKSEN. Will the Senator yield?

Senator ERVIN. Yes.

Senator DIRKSEN. Mr. Eckler, standing in section 3(a) as big as the moon on Rockaway Beach, is the word "or." You ascertain how many registered and if it was less than 50 percent, that is one thing. Then it says or that less than 50 percent of such persons voted in the presidential election of 1964. You can make a finding in the alternative and if the Secretary of State of any given State certifies as to how many registrants are in that State, as in the case of Louisiana, to which Mr. Perez testified yesterday, you can just take that figure and say, we will accept the State's figures at face value and if they are not correct, then obviously, it is an impeachment of the State itself. But you do not have to answer the last part of that question.

Senator ERVIN. I think maybe he should.

Senator DIRKSEN. It is a matter of policy.

Senator ERVIN. It seems to me that he should not certify figures he does not believe to be accurate, and I do not believe he is going to do that. He says he is not going to do it.

Senator DIRKSEN. I say it might be a reflection on the accuracy that the State puts into the collection of figures to be announced publicly in its various election publications.

Senator ERVIN. This is another example of how unfair this bill is. In the administration, according to your interpretation, the most accurate way to determine whether a State is misapplying the literacy test is to take the number of people who pass the literacy test and who are registered. But they are going to throw that away and take the less reliable test; that is, the number who see fit to come out to vote. To show you how unjust it is, let us look at the State of North Carolina. According to the figures the Attorney General put into the record, North Carolina has registered 76 percent of its entire adult population. New York, on the contrary, has registered seventy-four-and-a-fraction percent of its entire adult population. Both States have a literacy test. But under the second clause of this bill, North Carolina would be shown to be violating the 15th amendment while New York would not. Here we are going to throw away the reliable test and take the less reliable.

I yield to the Senator from New York.

Senator JAVITS. Mr. Chairman, I am very grateful to my colleague. We are marking up a bill downstairs and I would like to ask one or two questions, if I may, based upon what Senator Kennedy has been asking. Is that agreeable to the Senator from North Carolina?

Senator ERVIN. Yes.

Senator JAVITS. I am very interested in these figures from the U.S. Civil Rights Commission, to which I understand you gave Senator Kennedy some information. May I ask whether the Commission sought from you any assistance in compiling its figures? Has it sought from the Bureau any assistance in compiling the figures?

Mr. ECKLER. Senator Javits, there was no assistance sought in connection with the registration figures. The figures on voting age in the report of the Civil Rights Commission were our figures. But on the registration—

Senator JAVITS. I was interested very strongly in the figures they developed relating to Negroes voting in certain counties. I might point out, just bearing on what Senator Ervin has said, that we are dealing here not only with States as a whole but with political subdivisions of States.

In other words, this bill would be applicable to individual counties within States which might, on a statewide basis, have quite a different record than individual counties within it.

Did they seek any help from you either by way of criteria or actual information on this question of Negroes voting?

Mr. ECKLER. I am not aware of any assistance they obtained.

Senator JAVITS. So in order to get their criteria and what they did, how they developed their figures, we would have to ask them, is that not correct?

Mr. ECKLER. That is correct.

Senator JAVITS. Thank you, very much, Senator.

Senator ERVIN. In that respect, do you not know that a great many civil liberties organizations have been opposed to any description of a person's race upon official records?

Mr. ECKLER. Yes, I am aware of that.

Senator ERVIN. And as a result of that, the registration books of many States do not show the race of the people registered, do they?

Mr. ECKLER. I believe it does not show—the basis for the elimination I am not familiar with.

Senator ERVIN. And you have no information in the Bureau of the Census which would disclose the racial composition of the persons on the registration books?

Mr. ECKLER. No, sir, we do not have except as you would—if we had access to those and matched them back against schedules. Otherwise, we would have no basis for getting that information.

Senator ERVIN. This may not come within your competence, but I cannot forbear asking the question before the Senator from New York leaves.

The voting records put in evidence by the Attorney General show that 51.8 percent of the people of North Carolina voted and only 51.8 percent of those from New York City voted. Both North Carolina and New York have a literacy test. Do you not think it is rather peculiar that New York is allowed to go its own merry way in admin-

istering its literacy test and North Carolina would be deprived of that in 34 counties?

Mr. ECKLER. I think this is outside my competence, Senator Ervin.

Senator ERVIN. Can you not agree with me that that is a rather queer result of a bill that is supposed to promote fairness?

Mr. ECKLER. It is necessary, I think, in the case of any legislation, to establish some kind of limits as to what you are going to attempt to do with that legislation. As to whether these are good limitations or not, I think it is outside of my competence as a technical official to offer a judgment.

Senator JAVITS. Would the Senator yield for a correction of fact?

Senator ERVIN. Yes.

Senator JAVITS. I understand the figure the Senator cited for New York County, which is the Borough of Manhattan and that is less than a quarter of New York City. I understand that is the lower figure and the other figures are higher.

Senator ERVIN. The figure I am citing is not made up or compiled, so far as I know, by any sinful southerners. It is compiled by the Congressional Quarterly in the weekly report for March 19, 1956. This says New York—it is a selected county.

Senator JAVITS. It is New York County.

Senator ERVIN. New York City has a population of 1,258,867 of voting age. Only 645,557 voted, which this compilation says is 51.8 percent. I do not want to press Mr. Eckler on it, but I say it is a queer bill that says North Carolina, which voted one-half of 1 percent more, is to be deprived of the right to have this literacy test applied in 34 counties while New York County can continue to apply its literacy test. It shows that figures not only lie, but that the figures produce queer and unjust results.

Senator JAVITS. Would the Senator yield again?

The Senator is absolutely right and in this case, the Congressional Quarterly is wrong. It lists under New York, selected county, New York City, and it should be New York County.

Senator ERVIN. It even gives an illustration. The Senator from New York joins the Senator from Hawaii in showing that people who collect figures make mistakes. And this bill says you cannot defy them.

Senator JAVITS. Is that really accurate in view of the fact that you can go into court and show the truth?

Senator ERVIN. No, you cannot go to court and show the truth. This says it shall be final. Even the good Lord cannot change it.

Mr. ECKLER. Senator Ervin, I wonder if I might at least come to the defense of the figures that Senator Fong was bringing out. I would not want to interpret that as an indication that the figures were in error. The composition of the figures may have a particular characteristic that leads to a conclusion that is contrary to what you ought to get. The duty of a statistician or the duty of the people using the figures is to bring out these characteristics of the universe. That is what Senator Fong is trying to do. That was not in error.

Senator ERVIN. Senator Fong has very well demonstrated that when you take a percentage as a basis for an operation of legislation, you are taking something that is about as reliable as the shifting sands.

Here is North Carolina with 51.8 percent of its people of adult population voting and the State of Texas with only 44.4 percent of its population voting; yet North Carolina is condemned by this law and Texas is exonerated.

I want to thank you for your statement. Despite the fact that some of these projections and estimates that are made are final, I will tell another story to illustrate something about estimates.

Bill asked his friend George, "What become of your old hound dog?"

He said, "I sold him for \$5,000."

Bill said, "George, you know you never got \$5,000 for that old hound dog."

He said, "No, I did not get it in cash, but I got it in trade. I took two alley cats which were estimated to be worth \$2,500 apiece."

I think it is pretty bad when a law comes along and says estimates and projections are going to be final and not open to question.

I want to thank you.

Senator KENNEDY. Mr. Director, could I ask one final question?

Senator ERVIN. My good friend from Massachusetts said that the Attorney General gave a definition that was satisfactory to most of the Senators of this phrase "political subdivision." I called his attention to the fact that a political subdivision of a State includes all political subdivisions of a State such as cities and towns as well as counties and townships and school districts and sanitary districts and special school districts. He said they did not intend it to go below the county level. I pointed out to him the fact that the courts would have to construe this bill by the words in this bill rather than by the concealed intention in the mind of the Attorney General. And the Attorney General said, well, he thought maybe it needed an amendment to clarify that part of the bill. The bill needs many amendments. The best one would be to strike out everything after the enacting clause. Then it would be in right shape.

Senator KENNEDY. Just on that point, Mr. Director, I ask this question for the point of accuracy. Section 3(a) discusses the question of tests or devices in any State or any political subdivision of a State. What is in question is the definition of a political subdivision and after an exchange on that, I mentioned the definition in section 3(b) of the Douglas bill which says, "or any political subdivision of a State which is independent of the political jurisdiction of a county, parish, or similar political subdivision."

He agreed substantially with that.

Senator ERVIN. And in North Carolina, that would take in everything, including the wards of every city.

Senator KENNEDY. I had just one very brief question, just for clarification, on this section 3(a), which charges your responsibility, Mr. Eckler.

I can see a possibility wherein that first phrase of section 2, where it says the Director of the Census determines that less than 50 percent of the people of voting age residing therein were registered on November 1, 1964, you might have 100 people or 1,000 people and you might have 75 percent of those people which would be registered as of that date. Then that would mean that the aspect of the trigger would not work, but if less than 50 percent of those people actually voted in the

presidential election, then the trigger would work. In effect, then, there is an interrelationship in this. It is certainly my feeling that legislation which is directed toward the purpose in mind of registration, such a trigger certainly makes sense and is an important aspect of this legislation.

So I can understand, at least to some extent, that it is somewhat clearer as to what the responsibilities are.

Senator ERVIN. I am very much intrigued by this word "trigger." This is a trigger that is going to shoot the Constitution if it is pulled.

Senator KENNEDY. I want to express my own appreciation for your appearance and your responsiveness on these matters. I think it has been extremely helpful and I found it enlightening. I want to thank you and your assistant for coming up here.

Senator ERVIN. If there is no objection from any member of the committee, we will take a recess now until 2:15.

(Whereupon, at 12:05 p.m., the committee recessed, to reconvene at 2:15 o'clock, the same day.)

AFTERNOON SESSION

The CHAIRMAN. Mr. Macy, will you please come forward. You may proceed.

STATEMENT OF JOHN W. MACY, JR., CHAIRMAN, U.S. CIVIL SERVICE COMMISSION

Mr. MACY. Thank you, Mr. Chairman. I appreciate the opportunity of appearing before this committee on behalf of Senate 1564, the proposed Voting Rights Act of 1965.

In his address to the Congress on March 15, the President made crystal clear his determination that denial or abridgement of the right of a person to vote because of his race or color shall be eliminated. The Civil Service Commission will support the President in this task with equal determination. My colleagues, the Commission staff and I are honored by the responsibilities we are given by this bill.

The Attorney General, Mr. Chairman, has testified in detail on the need for this bill and on its provisions. Therefore, I am limiting my remarks to the specific duties of the Commission and the manner in which those duties would be carried out.

My colleagues and I are not unmindful of the reasons why the Civil Service Commission was selected to perform the functions that would be given to it by this bill. As the Attorney General has testified, the Commission was named because of its long established reputation as a nonpolitical and bipartisan body. We believe our experience equips us with the objectivity to perform the responsibilities assigned.

I would like to summarize briefly for the committee what the Commission conceives to be its principal responsibilities under the bill.

These responsibilities are set forth in sections 4, 5, 6, and 10. Section 4(a) provides for the appointment, without regard to civil service laws, of examiners to prepare and maintain list of eligible voters in the political subdivisions that become subject to the bill.

Under section 5(a) the Commission is authorized to prescribe the form of the application for registration. The form of the application

as provided for in section 5(a) will in a large measure depend upon the particular state or subdivision involved, the effect of the determinations made by the Attorney General under section 3(a) of the bill, and the outcome of the Commission's consultation with the Attorney General which is provided for in section 6(b).

The CHAIRMAN. What are you going to do? Are you an independent agency, or are you going to take orders from the Attorney General? Which is it?

Mr. MACY. Under the bill, Mr. Chairman, it would be the Commission's obligation to receive from the Attorney General interpretations as to the action the Commission would take in supervising the examiners. The Commission would be the administrative agency under this bill; it would not be the policymaking body.

The CHAIRMAN. What you do is take orders from the Attorney General? That is what you say?

Mr. MACY. We would follow the instructions of the Attorney General after he had made the certification that the examiner process was to be put into effect.

The CHAIRMAN. Proceed.

Mr. MACY. Section 6(b) authorizes the Commission to promulgate regulations concerning the times, places, and procedures for listing of eligible applicants and for the removal of registrants from the eligibility list. These same general factors will also materially affect the regulations concerning times, places, and procedures for application, listing and removal provided for in the same subsection. The latter section also requires the Commission, after consultation with the Attorney General, to instruct examiners concerning the qualifications required for listing.

The basic duties of examiners are set out in section 5 and its subsections.

The CHAIRMAN. Is the Attorney General going to tell you whom to appoint as examiners?

Mr. MACY. No, sir, the Commission will, by its own authority under this bill, appoint the examiners and assign them to the necessary duty.

The CHAIRMAN. What is your policy there on appointing examiners?

Mr. MACY. The qualifications I have a little further on in my statement, if I may proceed, Mr. Chairman.

The CHAIRMAN. OK.

Mr. MACY. These provide that examiners shall: Examine applicants concerning their qualifications; decide their eligibility in accordance with instructions; list promptly those found eligible; certify and transmit such lists and supplements at the end of each month to the appropriate election official with copies to the Attorney General of the United States and of the State concerned; issue a certificate to each person listed as evidence of his eligibility to vote; remove, under specified circumstance, the names of persons from the eligibility lists; accept payment of the poll taxes, issue receipts therefor, and transmit such payment to authorized State or local officials.

The CHAIRMAN. Whom are you going to consult with to select the examiners?

Mr. MACY. The Commission will develop in accordance with its personnel management experience in examining, the qualification standards for the selection of these examiners, and make the actual

selection itself and assign the examiner to the political subdivision where the bill is to be applied.

The CHAIRMAN. Have you consulted anyone at the present time on the appointment of examiners?

Mr. MACY. No, sir; there has been no preliminary consultation on it other than a discussion with officials in the Justice Department with respect to the legislation in general. Since I became aware of this assignment in the bill to the Civil Service Commission, I have had a task force within the Commission considering the processes and standards that would be applied in the event the legislation was passed.

The CHAIRMAN. It would be the Democratic National Committee?

Mr. MACY. No; as I indicate a little further in my statement, there would be no political test whatsoever. The Commission, as a merit system administrator, would continue to follow its nonpartisan merit standards in administering the examiner program.

Under section 9(e), the examiner is also charged with the responsibility of receiving complaints, made within 24 hours after the closing of the polls, from an eligible registrant that he has not been permitted to vote or that his vote was not counted. If, in the opinion of the examiner, the complaint is well founded, it is conveyed to the U.S. attorney in the judicial district concerned. In section 6(a), provision is made for challenges to the listing made by the examiner. The Commission is responsible under this section to provide hearing officers to hear and determine such challenges and also to prescribe by regulation rules to govern the application of these provisions.

Upon notice from the Attorney General under the conditions set forth in section 10, the Commission is required to terminate the listing procedures.

The success of this program like any other enterprise of this magnitude, obviously depends heavily on the quality of the people who actually perform the work. The examiner's job, as indicated above, is one which requires people of maturity, unquestioned impartiality, and integrity. They must have such personal qualities as objectivity, patience, and tact. They must have the ability to analyze and decide issues of fact, to exercise sound judgment, and to meet and deal effectively with applicants, local officials, and others. They will need to be people who can represent the Civil Service Commission with dignity and who are capable of inspiring confidence in the integrity of the listing procedures. Their record of experience must have demonstrated a record of successful performance in a position of responsibility and trust.

In keeping with the temporary nature of the assignment, selection will not be based upon the usual open competitive civil service examination. However, no political test will be permitted.

As you can see, examiners will be required to possess the highest qualifications. The number of examiners and the specific persons designated will be carefully tailored to the particular circumstances of the local community being served. The objective will be to use local residents when feasible. The overriding consideration, of course, will be to employ those people who will be able to function in the best interest of the purpose of this bill.

Generally, we would propose to have a supervising examiner serving several counties. It would be his responsibility to supervise the examiners located at the level of the political subdivision.

The hearing officer provided for in section 6(a) will have responsibilities of a quasi-judicial nature. He will require many of the same kinds of personal qualities and abilities which I described previously for an examiner, plus an ability to hold hearings in a judicial manner.

Our objective in each case will be to prescribe fair and lawful regulations and procedures which will fulfill the responsibilities placed upon the Commission by this bill.

My colleagues and I recognize the importance of the tasks to be assigned to the Commission by this bill. If the bill is enacted into law, the Civil Service Commission will perform these tasks in such a fashion as to justify the confidence placed in it.

Thank you, Mr. Chairman, for the opportunity to offer this testimony today. I shall be pleased to answer any questions you and other members of the committee will address to me.

The CHAIRMAN. How many registrars do you expect to appoint to a county?

Mr. MACY. This is difficult to ascertain at this date. It is, of course, the hope of everyone concerned with this legislation that there will be widespread compliance and very limited requirements for examiners. It is our view that the number would be determined by the time and the number of potential registrants in a given subdivision, that in some areas, there would be greater needs than others. I would say that as a general figure, we would feel about 100 examiners would be called for.

The CHAIRMAN. One hundred examiners?

Mr. MACY. This is a very tentative, preliminary figure. We feel about 100 examiners.

The CHAIRMAN. In how many States?

Mr. MACY. This is assuming that the seven States would be involved.

The CHAIRMAN. So you feel 100 examiners would suffice?

Mr. MACY. That is correct, sir.

Senator ERVIN. And you on the Commission could appoint some carpetbaggers to come into 34 North Carolina counties and determine which citizens of North Carolina are qualified to vote and also pass on whether complaints of persons that have been denied the right to vote in an election are just and meritorious or not, and then to pass on the question of challenges, could you not, under this bill?

Mr. MACY. Under this bill, Senator Ervin, the Commission's intent would be to utilize to the maximum extent people in the locality to serve as examiners. This certainly would be desirable. This would be our view.

However, there may be some instances where it is not possible to secure voluntarily the services of examiners from a particular community. In that event, the legislation would permit the selection by the Commission of individuals meeting these qualifications from outside.

Senator ERVIN. In other words, under the present form of this bill, the Commission would be given the power to appoint some examiners from Pekin, Ill., or Kalamazoo, Mich., or Braintree,

Mass., or even from Peiping, China, to come down to North Carolina and determine who is going to be allowed to vote down there.

Mr. MACY. That last location you cited would surely be excluded. Senator ERVIN. Where is it excluded?

Senator DIRKSEN. Perhaps I should be heard. The trouble is they will not be able to talk our language.

The CHAIRMAN. I want you to point to the provision in this bill that excludes it.

Senator ERVIN. The people in North Carolina would not have to know our language, because they would not be required to read and write, or even to speak English.

Senator HART. These individuals would have to be citizens to be appointed. Obviously, we would not look outside the community unless this was viewed to be an absolute necessity.

The CHAIRMAN. Why would they have to be citizens? Where is the provision of the bill which would require you to appoint citizens?

Mr. MACY. These would be employees of the United States and would, therefore, have to be citizens in order to serve in this capacity.

Senator ERVIN. Where is there anything in this bill to that effect?

Senator DIRKSEN. Well, it does not have to be.

Mr. MACY. These are appointments made to Federal service and would therefore be limited to citizens.

Senator ERVIN. Mr. Macy, do you not know we are employing thousands of people in the United States and thousands of people over the world who are not U.S. citizens?

Mr. MACY. Certainly I know we are employing people abroad under special legislation that permits us to employ aliens. However, here in the United States, it is only where special authority is given under certain special conditions to appoint noncitizens.

Senator ERVIN. There is not a single restriction in this bill that a man to be an examiner must be a citizen or that he resides in the United States. There is not even a requirement that he even be able to read and write.

Mr. MACY. No; but certainly the Civil Service Commission would not certify anybody to this position without meeting the qualifications that I referred to.

The CHAIRMAN. That is the trouble with you fellows. You come down here and demand, ask for a wide grant of power and then say, if you give it to us, we shall not exercise all that power.

I want you to answer this question: The Communist Party in my State is in business in a big way. It is in business in the name of the Freedom Party. Every little town has a Freedom House, which is a Communist indoctrination center and that is all it is. I want to know if you are going to appoint people who are affiliated with a Communist organization?

Mr. MACY. No, Mr. Chairman; the Commission would abide by existing standards which preclude Federal employment to those who are not loyal to the United States.

The CHAIRMAN. The people do not actually belong to the Communist Party but the people who are running the Freedom Party are Communists. They are brought in there, they run it, they take advantage of people. People are affiliated with them. A lot of them are not members of the Communist Party, but they are influenced

by the Communist Party. I want you to answer me whether you are going to appoint people who belong to the Freedom Party in my State?

Mr. MACY. There will be no political test applied in making this selection or these selections.

The CHAIRMAN. What you are saying is that you would appoint people in my State that are under Communist domination.

Mr. MACY. I am saying we would appoint qualified American citizens to perform this function.

The CHAIRMAN. Even though they are members of an organization that is Communist controlled.

Mr. MACY. I am not in a position, Mr. Chairman, to identify just what control any particular group of American citizens may be under. Certainly the Commission would follow the law and Executive order with respect to assuring that those who serve their Government are loyal to their Government and that they met the standards of suitability that are applied in Federal employment.

Senator DIRKSEN. May I interject?

The CHAIRMAN. Yes.

Senator DIRKSEN. Mr. Macy, how long have you worked in the Civil Service Commission and personnel field for the Government?

Mr. MACY. Senator Dirksen, I have been employed by the Federal Government largely in personnel work since 1939, with the exception of military service for 3½ years, and 3 years in academic life; so about 20 years.

Senator DIRKSEN. Or more?

Mr. MACY. Yes.

Senator DIRKSEN. And you have done a great deal of personnel work for the President of the United States?

Mr. MACY. Yes, sir.

Senator DIRKSEN. And you have never had any difficulty in all that time, whatever the status of the law may be, in finding people who are citizens, who are loyal, and who are expected to and who do discharge their responsibilities adequately?

Mr. MACY. That is correct.

Senator DIRKSEN. And I may add that some of the discussion is mute, I think, because I made the point when this bill was in the drafting stage that first of all, I thought the examiners ought to come from the area and from the State where they are expected to operate and interestingly enough, when I made that observation on the floor of the Senate, one of our very liberal Members stood up to say if you put that in the bill, if you put those restrictions in the bill, I shall fuss and fight against it. I thought that was a peculiar liberal doctrine, to say the least.

But I had the same feeling that Judge Ervin did. I did not want anybody to say that we were setting up a carpetbag constabulary of some kind here to invade States that were far afield for the performance of the duties as examiners.

Mr. MACY. Certainly, Senator Dirksen, in administering this responsibility, if the Congress extends it to the Civil Service Commission, it would be our effort to find individuals in the locality to serve in the roll of examiner.

Senator DIRKSEN. Now, let us assume that in a given area, you could not find a person who was either not qualified either by judicial

temperament or capacity or who might be under some fear about accepting an appointment of this kind. What would you do, or if you could not find somebody in a given State, and I think that is going rather far afield, but if you could not find him, you would have to have some language in the bill to give you some flexibility in order to meet the best standards, is that right?

Mr. MACY. That is it exactly and we would look to our own staff and other responsible Federal people in immediately adjoining areas to serve in this capacity.

The CHAIRMAN. Mr. Macy, you say you think 100 people would be an adequate number of examiners?

Mr. MACY. That is my preliminary tentative estimate, yes, sir.

Senator ERVIN. Do you not think that Congress, in passing a bill, ought at least to assume that there are sufficient men in North Carolina of integrity and character and intelligence to serve in this capacity.

Mr. MACY. As Senator Dirksen indicated, I think it is desirable to have the added flexibility to permit, in instances where it is not possible to find qualified persons and willing persons in a community to make it possible to go to other areas for them.

Senator ERVIN. Well, then, do you have any reason to believe you would have to go outside of North Carolina to find men of sufficient intelligence and integrity to act as examiners in North Carolina?

Mr. MACY. I am not aware of all the details of conditions in North Carolina, but I would certainly hope that it would not be necessary to go outside the State.

Senator ERVIN. Do you not have anything more than a hope that you might find a sufficient number of examiners out of 4.5 million people?

Mr. MACY. My hope would be that it will not be necessary to have examiners.

Senator ERVIN. It is not necessary. That is why I am against the bill.

Mr. MACY. That is why I am hoping that the compliance will be such that it will not be necessary.

Senator ERVIN. Mr. Macy, are you telling me that you are not willing to take it for granted, to get beyond the mere stages of inchoate hope, that there are enough people of integrity and character and intelligence in North Carolina to act as examiners in North Carolina counties?

Mr. MACY. I certainly would not want to answer that in any way to reflect adversely on the intelligence or integrity of the people of North Carolina. I am sure that there are many people who would meet the standards I have specified.

Senator ERVIN. Well, I think the bill ought to be amended to prohibit carpetbagger examiners, myself.

Mr. MACY. If that is the judgment of the Senate and the House, we shall certainly act accordingly.

Senator ERVIN. I want to make one more observation and then I have to leave to catch a plane. But you say, that as the Attorney General has testified, the Commission was named because of its long-established reputation as a nonpolitical, bipartisan body. The Commission thus far has not been concerned with administering election laws, has it?

Mr. MACY. That is correct.

Senator ERVIN. I hope the Commission still has that reputation—the Commission's reputation is excellent at the present moment. I hope you still have it when you get through with this. I want to tell you what this bill is and the kind of reputation it gives peoples in States.

Edmund Burke says you cannot indict a whole people, yet this bill indicts a whole people. It says that North Carolina, because it voted 51.8 percent of its adult population while New York County was voting only 51.3 percent of its adult population and Texas was voting only 44.4 percent of its population, is virtually presumed to be violating the 15th amendment, whereas New York County and Texas are to be presumed innocent of such nefarious conduct. I hope they will judge the Commission on a fairer basis than that and that the Commission's reputation will not be impugned upon such evidence as North Carolina's is by this bill.

Mr. MACY. It certainly is our intent to maintain our reputation for objectivity and fairness in administering this difficult program, as we have in administering the merit system for the Federal Government.

Senator ERVIN (presiding). That is all.

Senator HART. Mr. Macy, is it your understanding under the bill that one currently employed by the Federal Government could be given this examiner assignment? In other words, is there any bar to holding a second job if the second job in the Federal Government is created by the voting rights bill?

Mr. MACY. No, sir, there would be no bar. It is our view that the examiner function will be largely short term and part time and that this would mean that it would be possible in certain instances to utilize Federal employees, either on a leave status or as an additional duty, to perform this particular function. It would be our intent to look first to the Federal employees in these communities to see if there are those who meet these qualifications and who have a willingness to perform in this function. We feel that this would be desirable. We feel that in these communities, the Federal official has a reputation for integrity and public interest and that such individuals would constitute a resource that could be used for this purpose. The bill provides no bar for that type of employment.

Senator HARR. I think that the Congress is fortunate that a man of your integrity, and character, and experience is available to be given this assignment.

Senator ERVIN. He could be chairman of the election board of North Carolina and Mississippi, Alabama, Georgia, and North and South Carolina.

Senator HART. I am sure any man you would pick would regard it as an honor and a public obligation to perform that duty.

Senator ERVIN. That is correct, Senator.

Senator HART. I repeat, I think it is very fortunate that we have a Civil Service Commission with a reputation which men like you have and have had.

I notice our chairman is back. I should comment that I was one who sought to seat the Freedom Party delegation at our convention a year ago. I would hope that the remarks of the chairman would not preclude you from considering the society in Mississippi and elsewhere to be an open one from which you could draw from all corners, absent

only the proof that the high standards you have described to us were not met by anybody.

Mr. MACY. That certainly was the intent of my response.

Senator ERVIN. I would like to state, Mr. Macy, that no questions I have asked are intended to be a reflection on you or the Civil Service Commission. I have a very high opinion of you individually and officially, also of the Civil Service Commission. But I have a very low opinion of a bill which would provide for sending carpetbaggers into my State to pass on the qualifications of North Carolina voters and also to make a quasi-judicial decision.

Mr. MACY. I understand that, sir.

The CHAIRMAN (presiding). Do you expect to hire postmasters?

Mr. MACY. No, sir. The feeling is that the postmasters' examining and selection system is such that it would not be desirable to utilize postmasters. However, there are some employees in the post office who are selected through the regular civil service examining system who might very well be utilized in this part-time or short-term basis that I was describing in response to Senator Hart's question.

Senator KENNEDY. Mr. Macy, in your discussion about the kinds of people that might be appointed as examiners, you are not excluding the possibility that these might be people who are already under civil service, is that right?

Mr. MACY. No, sir, Senator Kennedy. The view is that in many instances, we would look to the present Federal employees for the performance of this function.

Senator KENNEDY. That is not exclusive. You might have some who were presently Federal employees and you might have some from the outside?

Mr. MACY. That is right. I would view the probability that there would be a mixture of the two. As I indicated in my statement, it would be necessary to tailor the composition of the examiner force, depending upon the particular community and its voting records.

Senator KENNEDY. Now, if you were to have someone who was already a Federal employee, and you gave him the responsibility that you have given under this act as far as extending your responsibilities as a Federal examiner and he were to fail to live up to those responsibilities and his service was terminated, would he retain any rights under civil service, and if so, what rights?

Mr. MACY. Yes, if an individual Federal employee were assigned duties as an examiner, the removal authority in this bill would only apply to the termination of his services as an examiner. It would not affect his regular employment status.

Consequently, he would be returned in the event of termination--terminating action to his regular employment, where he would continue to have all of the benefits of the civil service laws, the Veterans Preference Act, and other protections.

Senator KENNEDY. You also mentioned the possibility of using deputy examiners. Would they be subject to the same criteria or standards as far as their competency as examiners themselves?

Mr. MACY. Yes, that is right. These would be subordinate examiners who would be working in support of an examiner in a particular area. We would apply the same qualifications and standards, require that they meet the same performance standards.

Senator KENNEDY. You outlined in quite good detail in your testimony this afternoon the kinds of standards which they would meet, not only deputy examiners but the Federal examiners as well, on page 3 of your testimony. I am wondering if you could give us a GS rating for that?

Mr. MACY. I have not finally determined that.

Senator KENNEDY. I know it has been suggested by a member of this committee that a GS rating be used as a guideline or a standard of the degree of competency that these individuals would have. It would appear to me in looking at the kinds of criteria which you have outlined in your testimony, you could pretty well establish an outline or at least establish a criterion that is somewhat more specific, for examiners, as they would be Federal employees. What would be their rating as a Federal employee, or would you prefer to have a degree of discretion on that?

Mr. MACY. I think discretion is desirable on this. Generally, the level we have been discussing has been the GS-11 or 12 level for the examiners. I notice that in the Douglas bill, it specifies they should be at GS-12 level. We are generally in accord with that as a standard.

Senator KENNEDY. But you prefer not to see—

Mr. MACY. I prefer not to see it specified, because I believe there will be a great deal we shall need to learn about the nature of the operation, how it should be organized, how it should be staffed, and flexibility would therefore be desirable.

Senator KENNEDY. I do not see written into this bill any provision for the protection of examiners in their normal function of fulfilling the duties which you will charge them with or which the Civil Service Commission will charge them with. Do you feel there should be any safeguards provided for the examiners?

Mr. MACY. Yes, I think that would be a worthwhile addition. There is no language at the present time that would provide that. I think a person serving as an examiner under the terms of this bill should have the protection of Federal law.

Senator KENNEDY. This would be against intimidation or violence?

Mr. MACY. Personal attack. There are presently pending some bills that would provide for this for postal employees. I think we could develop language from that which would be applicable to this.

Senator KENNEDY. Can you foresee the possibility where State registrars would be used as Federal registrars?

Mr. MACY. No, I would not see that. The employment would be from within the ranks of the Federal Government or outsiders who are private citizens.

Senator KENNEDY. Now, I would like to direct your attention to section 6(a) of the bill, which provides that any challenge to a listing on an eligibility list should be heard and determined by a hearing officer appointed by and responsible to the Civil Service Commission and under such rules as the Commission shall by regulation prescribe. Could you indicate the standards by which such an examiner would be selected? Are these standards which are similar to the ones you have outlined?

Mr. MACY. They would be similar to those we have developed for the examiner, plus some judicial experience or some experience in the administrative process.

Senator KENNEDY. Could you expand on that somewhat?

Mr. MACY. Yes, I would feel that some experience along the lines of that required for hearing examiners under the Administrative Procedures Act would be called for here, some knowledge of the law, some experience in handling evidence and handling documentation with respect to incidents that are presented to them. This would be a necessary addition.

I would also see that these hearing officers would be separate and distinct from the examiners, because they would be passing in some instances on the judgment of the examiner in an individual case.

Senator KENNEDY. And you would add those qualifications on top of the other qualifications which you have indicated for an examiner?

Mr. MACY. That is correct.

Senator KENNEDY. No further questions, Mr. Chairman.

The CHAIRMAN. Did I understand you to say you would appoint deputy examiners?

Mr. MACY. Yes, there would be, possibly, deputy examiners in certain areas in order to expedite the operation. There might be some support or clerical personnel in order to do the same thing.

The CHAIRMAN. What is the difference between a deputy examiner and an examiner?

Mr. MACY. This would be an individual working under the supervision of the examiner, presumably at a slightly lower compensation.

The CHAIRMAN. Thank you, sir.

Mr. MACY. Thank you, sir.

The CHAIRMAN. Mr. Paul Rodgers, assistant attorney general of the State of Georgia.

STATEMENT OF PAUL RODGERS, JR., ASSISTANT ATTORNEY GENERAL OF THE STATE OF GEORGIA

The CHAIRMAN. I understand you have no manuscript but you want to testify from notes?

Mr. RODGERS. Yes, sir; that is correct. Because of the swiftness with which this matter is moving, we found yesterday we had a firm appointment for today so we were caught somewhat quickly in trying to be prepared. We did not have an opportunity to make a manuscript, but I think we have notes which will adequately cover it.

Mr. Chairman and members of the committee, it is a pleasure to appear before you and I appreciate very much your taking your valuable time to listen to our views concerning the voting rights bill.

The State of Georgia opposes this legislation on several grounds, the significant part of which is we believe that the bill is unconstitutional or that it should be so declared.

Now, our basis on the constitutional argument is the fact that up until the present time, including the present time, the law has been that the States have the sole responsibility for prescribing voter qualifications and we think that intent was clear from the amendments, in particular the 17th amendment and the 10th amendment.

Now, the position that is taken by the Federal Attorney General that the second section of amendment 15 overrides these other provisions, that in effect, it repeals them. We do not think that is a sound proposition of law. It is textbook law and a basic canon of constitu-

tional construction that an effort should be made to reconcile amendments to the Constitution with the basic document and that repeals by implication are not favored and that amendments should be harmonized, if possible, with the original provisions. So consequently, what section 2 of article 15 says is that Congress has the power to enforce the guarantees of the first section by appropriate legislation. That means legislation of a nature which has been passed thus far which prohibits any type of discrimination in voting procedures and practices and maybe even the appointment of Federal registrars. But I do not think it was the intent, nor do I think that it is constitutional, for the Congress to enact legislation which in effect prescribes voter qualifications.

However, of course, we recognize that there is a very strong effort behind this bill and no doubt this bill or something similar will become law. While we do not retreat from our original opposition to the bill, we want at this time to turn o consideraion of several amendments which we believe will make the bill fairer.

The bill was rather hazily drawn and I think it is obvious, because there are certain technical defects in the bill which we think are unsound and we think will be revealed even to the strongest supporters of the bill.

We think first that the elimination of the literacy test goes too far. It goes too far unnecessarily. Actually, we think that just the appointment of Federal registrars would be sufficient to accomplish the purposes of the bill. Now, as you probably know, the Federal Attorney General testified before the House committee on this matter. He did not attack literacy tests. He did not say literacy tests were unsound. He did not criticize them. What he criticized was the application of the literacy test. He said that in certain areas of the South, application of tests were being discriminatorily applied. Of course, the State of Georgia is against that. We have made every effort to eliminate any such discrimination in Georgia. However, we think that Federal registrars in counties where it is necessary to correct these affairs could just as easily apply the State literacy test and, of course, they could be depended upon to apply the State literacy test fairly and indiscriminately.

The CHAIRMAN. You mean that Federal employees could apply the State literacy test, is that what you say?

Mr. RODGERS. Yes. Of course, we feel this would not impair the objective of the bill, but yet it would leave the present subscription of your qualifications for voting within State hands, where we think they belong constitutionally. That is why we suggest that the literacy test not be tampered with, that they be left as they are and let the Federal registrars apply them.

Second, we would like to comment upon this shotgun effect of the bill in applying the bill to an entire State. I am not familiar with the circumstances in Alabama, but I am familiar with them in Georgia. Now, in Georgia, we have attempted to eradicate all forms of discrimination, but we have some counties in Georgia that I think would compare favorably to counties in the Nation. The one I would like to select as an example is Fulton County, which contains metropolitan Atlanta. Atlanta has a reputation throughout the Nation as being a progressive leader in civil rights affairs. There have been great efforts

made in Atlanta. I think this bill would limit its scope to political subdivisions, which in Georgia would mean the county, and Atlanta and other areas that have fought against discriminatory practices, where the local citizenry has stood up to see that abuses like this do not occur, those counties should be excluded. It is unfair and unjust to apply this bill to a county which has accepted the responsibility of the matter and is not guilty of these abuses. Just because a few counties in a State have indulged in misconduct, the entire State should not be punished and this bill here is a stigma. This bill here is a yoke of disgrace and this stigma should not be placed upon counties that are not guilty of the faults which this bill attempts to correct. That is just basic justice and we think that provision of the bill is very unjust.

There is no reason why this 50-percent criterion cannot be applied to political subdivisions.

In cases, possibly in other States, where you have a strong influence from a State level may be to discriminate, that means that a great many subdivisions are going to be affected. But in Georgia where the effort is in the reverse, I think only a few counties would be affected.

The second thing that I would next like to comment upon, I think it is a great mistake to focus this bill toward the conditions which existed in this country as of November 1964. It appears to me that that is a very shortsighted approach. It appears to me to focus on that with the accompanying 10-year provision, but you cannot come out for 10 years; it destroys any incentive or improvement. There is really no incentive in this bill to improve. What this bill does is finger out several States permanently and say, "You are stuck."

Now, I think that with the migrations that are going on in this country today, the great movement of Negroes from one part of the country to the other, the great number of Mexicans we have in the Southwest, Puerto Ricans moving into New York, Chinese in California, very quickly you could see that other abuses could arise in other States outside of these that have been fingered by the bill. I think the legislation should be national in scope, not limited. I think that this 50-50 criterion should not apply to any one election. I think it should apply to the preceding congressional election. So that any States that have been fingered by this thing, if they say, "Well, we are going to accept this responsibility and we are going to go out and increase voter registration, both Negro and white," they have an incentive to go out and do this and correct this on their own. So consequently, I think the 50-percent criteria should be applied at the last congressional election.

For instance, in Georgia, we can go out and we can make a great effort to increase the voter registration and to increase the voter turnout and that way, we can get out from under the bill. We think that is just basic justice.

We think, also, the bill should be national in scope because abuses can arise elsewhere and under this bill, the way it is drawn, if abuses do arise elsewhere, you are going to have to amend the bill. This bill as it is drawn is really just temporary legislation. But to change the bill and to put the bill on that basis would make it permanent

legislation, would make it a better bill, and would make the bill more specific in only applying to those that are only guilty of wrongdoing.

Senator DIRKSEN. Mr. Rodgers, if you will bear with me on that point, I quite agree with you, there should be some incentive for a State or a political subdivision to clean up a discriminatory situation if it exists and when it manifests good faith, it ought not to take too long. It is the old State carrot-and-stick principle. You use a little stick, but you also hold up a little carrot and make that the incentive.

I might say to you that while it was reported in that fashion, I did reserve on that point because I was not satisfied with the provision as it came out. I am confident that that general picture will be modified before we get through.

Mr. RODGERS. I certainly hope so, thank you.

Next, turning to specific provisions of the bill, on page 3, you have this provision—of course, these are in addition to the other situations—about this 10-year period. In other words, if there has been a court decision anywhere in the State in which it has been determined that voter discrimination was practiced, the State cannot get out from under for 10 years. We hope this will be aimed just at political subdivisions, not the State as a whole, but we think that 10 years is a very long time. That also applies to the incentive. We think that ought to be reduced to 5 years or less. At any rate, we certainly think it ought to be reduced to 5 years. The effect that would have is it would give the political subdivisions of Georgia or give Georgia if the bill is not modified, a fighting chance to get out. Georgia would have to carry a burden of proof before a three-judge district court here in the District that discrimination does not exist in Georgia today, but to say to Georgia, with all the efforts we have made, with the adoption of new election codes and so forth, with the rapid increase in voter registration in Georgia recently, you are going to have to wait another 5 years before you stand a chance of getting out—we think that is quite severe. We think that period of time should be reduced.

Senator HART. Could I interrupt for a question of Mr. Rodgers? The CHAIRMAN. Certainly.

Senator HART. What was the date of the judgment of the court with respect to voter discrimination?

Mr. RODGERS. It was about 5 years ago. So if that were reduced to 5 years, that would give Georgia the right to come before a district court here in the District and try to prove that things like that do not exist. It was approximately 5 years ago.

On page 5, in the paragraph that ends at the top of the page, we think that proviso there is very unfair because it says, the first part of the paragraph says that a person cannot appear before the Federal registrars until after he has tried to register before the State registrars. We think that that is a bad approach by the bill, because we think that even in these affected counties, the State or the county registrars should have the primary burden and responsibility for registering people to vote and that the Federal registrars, when they come into a county, should only exist for the purpose of correcting abuses by the county registrars, not to register people in the first instance. One thing that I think will strengthen the bill and probably give the wider scope is to say, where the bill says he has been denied under color of law the opportunity to register, that could say he has been denied

a reasonable opportunity so in the case of Alabama, if they do not have but a few registration days or if the line is particularly long and it was determined there was not a reasonable opportunity afforded, then the Federal registrars could act. I think that would strengthen the bill but I think in every case, the primary responsibility for registration should be placed upon the State registrars, county registrars, and that remedy should be exhausted or attempted to be exhausted before a person could turn to the Federal registrar.

Senator HART. If I could before you leave that——

The CHAIRMAN. I think you ought to ask some questions while he talks, since he has no manuscript.

Senator HART. Yes; while it is fresh in my mind and in the minds of each of us.

I did not understand the suggestion you made with respect to this particular section 5(a).

Mr. RODGERS. Yes, sir.

Senator HART. As the bill has been introduced, it would require an effort to have been made within a previous period of time locally to register; then an application to the Federal registrar and the provision that would permit the Attorney General to waive the effort. What do you suggest would in your view be an improvement of that?

Mr. RODGERS. Well, I think that the proviso should be stricken from the bill. Now, I recognize from what I have read in the press that in Alabama, and that is one of the stimulants of this bill, they have very few voter registration days and that the registrars take a long time, so the newspapers say, and the lines are very long and they do not really afford a good opportunity for voter registration. So, in striking the last proviso, you could still get around the slow-down tactics by modifying "opportunity" with the word "reasonable." He has been denied under color of law a reasonable opportunity to register or to vote, et cetera. I think by inserting the word "reasonable" you get around slowdown tactics by your county registrars.

But my main recommendation is to strike the proviso so that your county registrars would still be charged with the primary responsibility of registering voters and that your Federal registrars will only come into play in order to correct abuses by the county registrars.

Senator HART. I understand now. Do not interpret my silence at the moment as being agreement. I think there should be an improvement made in this and it would be in the direction of eliminating the obligation, again, to go back to the local registrar and perhaps suffer the harassment and pressure that this would require. I would prefer to amend it to just the opposite so as to waive the obligation to go locally in these areas. That is just a difference of opinion. I wanted it clear in my understanding what you said.

Mr. RODGERS. Now, on page 6, the top of the page, it gives a 45-day voter registration deadline. It says that people who register with the Federal registrars shall be entitled to vote in any election which occurs more than 45 days after they register. We suggest the period at the end of that sentence should be stricken and you should tack some language on to the end of it "or prior to the voter registration deadline prescribed by State law, whichever time is latest."

The purpose of that would be in a State which has a 30-day voter registration deadline, that would mean that those who registered with

the Federal registrars would be under a 45-day deadline and those who registered with the county registrars would be under a 30-day deadline. I think language should be put in there where the voter registration deadline is short that the Federal voter registration deadline would follow State law.

Now, of course, I recognize that you want to put in some kind of deadline provision, because some States have 6 months and some States have more. So I recognize the need for putting in a voter registration bill, but there should be flexible language put in the bill there to permit a shorter voter registration deadline for those registered with Federal registrars where State law provides a shorter voter registration deadline.

Now, on page 7 of the bill, the paragraph at the top, the beginning of the third line, says "Such challenge"—this is challenging of those registered by the Federal registrar—"shall be entertained only if made within 10 days after the challenged person is listed."

We think that 10 days is not a wise provision at all because there is hardly anyone who is going to make the effort. When you register a person to vote, you rely largely upon his own oath as to his qualifications and if he perjures himself or lies, the Federal registrar will be deceived. Now, other people in the community who know that person may find out subsequently that he is not qualified for some reason. So we think the 10-day provision should be eliminated and should permit challenge at any time. Because frequently where challenges occur is after a person has been registered for a period of time or when someone sees a person appear at the polls to vote and he for the first time recognizes that that person is not qualified to vote. So we think the 10-day provision should be eliminated.

Also, I think it would strengthen the bill to require that the person who is being challenged must be given reasonable notice and an opportunity to defend himself. There is nothing in the bill that requires the person challenged to be given notice of the challenge and an opportunity to defend himself.

Also, there is an adequate safeguard in the last sentence of subsection (a) against challenges which there is no legal sufficiency to. The last sentence says any person listed shall be entitled and allowed to vote pending final determination by the hearing officer and by the court.

Well, you have a right to appeal this decision of the hearing examiner to the court of appeals. So consequently, that could take quite some time. During that time, the listed person cannot be taken off the list, so of course, that would involve, that would safeguard a person being temporarily thrown off the list for further misclaims. So we think there are adequate safeguards without that 10-day limitation. We think that 10-day limitation is bad for that reason.

Now, on subsection (b) of section 6 which appears on page 7, we think that provision is very bad, because what that provision does is give to the U.S. Attorney General the power to administratively provide voting qualifications for the States affected. Now, although we think that the bill will not be amended to cut out this literacy thing, we think that very clearly, all other voting qualifications prescribed by State law should apply. Those are qualifications such as age. In Georgia, a person can register to vote if he is 18 or will be

by the next election; such requirements as residence, as to criminal convictions, requirements as to mental incompetency, all of the other qualifications prescribed by State law which has been productive, so far as I know, have not ill results. They are not in the same category as the literacy test. All other qualifications of State law should be applied and consequently, we think subsection (b) should be rewritten to make it clear that all these other criteria of State law apply and the U.S. Attorney General would not be given the power to prescribe voter qualifications.

Senator HART. Mr. Rodgers, when did Georgia adopt the 18-year-old qualification?

Mr. RODGERS. That was in 1945, I believe. It was in the 1945 constitution of Georgia. That was under the administration of Gov. Ellis Arnall.

Senator HART. We had an interesting witness yesterday who suggested that this was part of the Communist conspiracy to seize the Black Belt, the 18-year-old vote. I wonder if Georgia's motivation was different.

Mr. RODGERS. No, I think the motivation was that the Governor at that time was quite liberal and I think he wanted to inject into the electorate a younger age group in the hope that it would help him politically. There has not been any recognitionable effect in the thing. Of course, Georgia is satisfied with the 18-year-old provision. That is quite liberal, because the vast majority of States require 21. I do not think it has any effect upon the electorate except to increase the franchise.

The next objection I would like to comment upon is section 8. We think that section 8 is a very iniquitous provision, because what section 8 in effect does is it makes a Federal court an integral part of the State lawmaking process in election matters. In other words it is somewhat comparable to the Governor's veto, because it says that no law, even an ordinance, no law of any kind adopted in any one of these States which affects voter qualifications or voting procedures can be enforced. Then it really does not become effective until it has been finally adjudicated by a district court. When you say finally adjudicated, that would also include an appeal to the U.S. Supreme Court. So what you have is the States could not longer adopt legislation on their own.

We think that is unconstitutional for this reason: Under the Constitution, article III, the Federal courts only have judiciary power. We think this right here is an effort to give State lawmaking power or participation in State lawmaking power to a Federal court. We think it is unconstitutional and we think it is, besides that, a very bad idea.

Now, the U.S. Attorney General has talked at some length about the great deal of time it takes to try these voter registration cases, all the man-hours. But those cases involved the development of factual patterns regarding applicants for voter registration. But when you attack the constitutionality of a State statute, that type of litigation moves along very quickly. We will say if one of these affected States adopts a law, and all laws have to comport with constitutional standards, that was unconstitutional regarding voting matters, what you have done is you would present your petition for injunction to a single Federal judge, who would then have the right to issue a restraining order until a three-judge court can be convened, and a three-judge

court can be convened very quickly. Then a final judgment so far as district court is concerned could declare the act unconstitutional; the point being, I think, that any State should have the right to enact the laws that it chooses and that no approval by a Federal court should be made a condition precedent to that. Any law should have the right to be born even though the law may not be entitled under the Constitution to live.

But we think section 8 goes way too far, that the thing is not needed, that the purposes of this bill could be accomplished without it. It creates a very bad precedent, because if this power is upheld here, think what this Congress could do under the Interstate Commerce power. I do not know of any parallel to section 8 in our history. It is a very iniquitous provision and unnecessary to the purposes of this bill.

Now, the second thing that we would like—in other words, if section 8 has to stay in, we would like in the third line of section 8 to add the word "registration" just before "procedures," because that language there is so broad. Well, now procedures for voting, that is an extremely broad term. If you pass a law regarding election districts, if you pass a law regarding voting machines or anything like that, I would think that would be under voting procedures. To be safe from a legal point of view, it would be a law that would affect voting anyway, setting dates, setting poll hours. You would have to rush up here to district court in Washington to get its approval. We certainly think that legislation should modify procedures in order to limit the scope. That is all this act is concerned with, anyway, so the language is way too broad.

Second, the third suggestion would be that if section 8 has to stay in, the November 1, 1964, date, should be eliminated and the date would be the date of the act, because we are moving further away from 1964 all along.

November 1964 all along.

The Georgia section of the general assembly has just been concluded and there were some amendments to State election laws which did not involve in any way the registration to vote of Negroes. We would have to get all those approved. We think the November 1964 date should be stricken and the effective bill should be adopted because this metropolitan activity application we do not think is in the public interest. If section 8 stays in, then a State knows if it passes a law, it has to stay within section 8. The Georgia general assembly, when they amended their laws, did not realize they would be confronted with something like section 8.

Now, the next provision that I wish to comment upon is subsection 9 on page 9, the bottom of page 9. That is this provision about if any person alleges that he was not afforded an opportunity to vote if he was registered by a Federal registrar, if he makes that claim within 24 hours, then a Federal district court can enjoin the results of the election. Of course, that can be appealed. In other words, you could tie up the election of a person for no telling how long. That could result in a breakdown in many areas of State government.

Now, we think that that provision is not necessary, because section 9(a) and section 9(c) of the bill provide very severe penalties for anyone who does not permit someone to vote who has been registered by the Federal registrars. I think those penalties are sufficient to

deter this habit. But just because some poll officer in some State somewhere should refuse to register one of these people, that would mean that everyone running in that election would not be certified—the Governor could not be. Where this would be most critical would be in the case of holding special elections to fill a vacancy in public office. That means that that office could continue to go unfilled except that the interim appointee, who would not be the choice of the public, would continue to serve. We think that provision is productive of confusion and we do not think that any good that could ever be wrought by that subsection (e) could ever outdistance the evils that could result therefrom. So we suggest that subsection (e) should be eliminated.

Senator DIRKSEN. Mr. Rodgers, would you be inclined to a modification of that section to the effect that where the result of an election was in doubt, it was that close, and discrimination had been actually established and that the votes denied would make a difference, that it would be limited exactly to those where that situation might apply?

Mr. RODGERS. I think that would greatly improve subsection (e). Just about all the States—I know Georgia does—have a contest procedure. So if it were that close, you could throw the whole thing in a contest and that could be eliminated by the State machinery provided therefor. Any State court would recognize that if there were a sufficient number excluded by these registrars to place an election in doubt, the election would have to be declared void. We would still prefer to see the subsection eliminated—subsection (e) eliminated entirely. But if that is not feasible, I think your suggestion would greatly improve the bill.

I believe that about concludes my comments on this. Some of these suggestions we feel would fully perfect the bill even in the eyes of the proponents of the bill. I would be happy to answer any questions anybody may have.

Senator DIRKSEN. Well, Mr. Rodgers, I just want to say that I think your testimony was quite objective and you approached this in a very fairminded way. I think you are to be complimented for the presentation you made here today.

Mr. RODGERS. Thank you, sir.

Senator HART (presiding). Senator Kennedy?

Senator KENNEDY. No.

Senator HART. Mr. Rodgers, the committee does appreciate the presentation. It was thoughtful and I think quite objective and very effectively done.

Mr. RODGERS. Thank you.

Senator HART. If there are no further questions, the committee will recess until 10 o'clock tomorrow morning, when Senator Sparkman and a delegation from the States of Mississippi and Virginia will be heard.

(Whereupon, at 3:40 p.m., the committee recessed, to reconvene at 10 a.m., Thursday, April 1, 1965.)

VOTING RIGHTS

THURSDAY, APRIL 1, 1965

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to recess, at 10 a.m., in room 2228, New Senate Office Building, Senator James O. Eastland (chairman) presiding.

Present: Senators Eastland, Ervin, Hart, Kennedy of Massachusetts, Tydings, Dirksen, Fong, and Javits.

Also present: Palmer Lipscomb, Robert B. Young, Thomas B. Collins, professional staff members of the committee.

The CHAIRMAN. The committee will come to order.

Senator Sparkman, proceed.

STATEMENT OF HON. JOHN J. SPARKMAN, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SPARKMAN. Thank you, Mr. Chairman, I appreciate the privilege of appearing before you on the important question of voting rights and more particularly on the details of the bill, S. 1565.

Mr. Chairman, I know that you have a heavy schedule before you this morning. I would like, with your permission, to submit my statement in full and have it printed in full, even though I may not read all of it.

The CHAIRMAN. It will be submitted as requested.

Senator SPARKMAN. Let me state at the outset that I have never opposed the right to vote. I believe it is an important American heritage. I believe in the full exercise of the right of franchise by all qualified citizens.

I want there to be no doubt, however, that I am opposed to this bill. It is a harsh bill, designed to punish the South. It is born out of emotionalism, and is hastened by the heat of passion, which history clearly shows is typical of the circumstances that usually surround hasty, stringent, and ill-advised legislation. This type of legislation usually carried with it more fundamental harm to our form of government than the little good that might be accomplished in the long run by its enforcement.

The bill would punish the States that (1) maintain a literacy or other test; (2) in the November 1964 Presidential election failed to have 50 percent or more of the adult population go to the polls; or (3) do not have at least 50 percent of the adult population registered. I am told that this restricts the bill to Southern States, thereby making it re-

gional legislation rather than national, general legislation, which it should be if it is necessary at all.

I opposed the three civil rights bills passed in 1957, 1960 and in 1964. It was my view after the long battles of those 3 years, in which I was engaged most actively, that the field of voting rights was one of the most heavily covered fields involved. Law after law has been written and passed and then revised to fit the alleged needs of the moment. As a matter of fact, I was somewhat curious to see how far the Supreme Court would apply what had been written into law, and how vigorously the Attorney General and the various civil rights organizations would utilize all the many and powerful legal remedies that Congress had given them. I did not have the time to draw any sound conclusions after the 1964 act, however, because the instant bill was thrown at us without sufficient use of existing law and without a bona fide effort to try it out and come back to Congress and show that it would not work.

The ink had hardly dried on two printed decisions of the Supreme Court on March 8, 1965, giving a very powerful and widespread effect to existing laws on voting rights, when S. 1564 was introduced. This bill was introduced on March 18, apparently in the attitude that the Supreme Court decisions allowing a whole sovereign State to be sued to protect the voting rights of Negroes, were not sufficient. From my point of view, they were sufficient—more than sufficient. These cases give very powerful methods of using the courts and not Federal registers or examiners to settle voting rights matters. I speak of the two cases, *U.S. v. Mississippi et al.* (No. 73) 380 U.S. 128, and *Louisiana et al. v. U.S.* (No. 67) 180 U.S. 145, both decided March 8, 1965, in the Supreme Court.

Let me quote from the concluding paragraph of Mr. Justice Black's opinion in the *Louisiana* case.

It also was certainly an appropriate exercise of the district court's discretion to order reports to be made every month concerning the registration of voters in these 21 parishes, in order that the court might be informed as to whether the old discriminatory practices really had been abandoned in good faith. The need to eradicate past evil effects and to prevent the continuation or repetition in the future of the discriminatory practices * * * completely justified the district court in entering the decree it did and in retaining jurisdiction of the entire case to hear any evidence of discrimination in other parishes and to enter such orders as justice from time to time might require.

I do not cite these cases in any sense that I approve or endorse them. I cite them to show that present law can be broadly applied, in a manner that appears constitutional to the Supreme Court, and in such a way that it will not completely tear down traditions of government and our form of government. The present bill would do just that, and the Supreme Court would have great difficulty in not someday agreeing with my statement here today.

It should be noted that the Court, on March 8, did not abolish literacy tests. It merely stated that the discriminatory use of these tests as between whites and Negroes has to stop and whole States can be brought in as defendants to bring this into reality.

The present bill, in a sense, condemns literacy tests. The Supreme Court for years has affirmed these tests as a reasonable exercise of a State's authority under the Constitution to determine the qualifications of voters.

In the case of *Lassiter v. Northampton County Board of Electors*, 360 U.S. 45 (June 8, 1959), the Supreme Court upheld North Carolina's literacy test laws requiring that a voter "be able to read and write any section of the Constitution of North Carolina in the English language."

The Court condemned literacy tests that have been employed as "a device to make racial discrimination easy," but found that this was not the case in North Carolina.

I quote from the Court's opinion:

The States have long been held to have broad powers to determine the conditions under which the rights of suffrage may be exercised * * *. We do not suggest that any standards which a State desires to adopt may be required of voters. But there is wide scope for exercise of its jurisdiction. Residence requirements, age, previous criminal record are obvious examples indicating factors which a State may take into consideration in determining the qualification of voters. The ability to read and write likewise has the relation to standards designed to promote intelligent use of the ballot. Literacy and illiteracy are neutral on race, creed, color, and sex as reports around the world show. In our society where newspapers, periodicals, books, and other printed matter canvass and debate campaign issues, a State might conclude that only those who are literate should exercise the franchise.

The Court made the distinction between a fair and sound literacy test and one which is a "a calculated scheme to lay a trap for the citizen."

I have quoted the *Lassiter* case because it seems to me that this bill flagrantly and directly violates the recognition that the Court gave only 6 years ago to the right of a State, and not the Federal Government, to determine the qualifications of voters. This right is stated clearly in article 1, section 2 of the Constitution, and the 15th amendment does not diminish it to the extent that Congress, and certainly not a Federal agency, can set the qualifications for voters in State and local elections.

According to this bill, whenever the Attorney General and the Civil Service Commission move in under section 4, as based on the 50-percent rule set forth in section 3, then the rights of a State cease. The drafters of the bill made an attempt to stick to constitutionality on line 8 of page 5, when they required a Federal examiner to determine whether an unregistered person had the qualifications prescribed by State law. But then they added the words "in accordance with instructions received under section 6(b)."

When we examine section 6(b) on page 7, we find that the Civil Service Commission can issue regulations governing examiners hearing cases and that the Commission after consultation with the Attorney General shall "instruct examiners concerning the qualifications required for listing."

In other words, the Commission and the Attorney General can determine voter qualifications, which the Constitution says that only the States can determine. Outwardly section 6(b) appears to be only a procedural section, but any intelligent lawyer can readily see that adding the word "qualifications" in line 22 changed it from merely procedural to substantive, as well as, and I think that is clearly unconstitutional. I sincerely hope that the committee at least will delete this section and restrict examiners to conforming to State law, in its report on the bill.

Another section showing that the rights of a State cease when the examiners move in is section 8. Here a State would be helpless even as to the power of its State legislature. If any new law on voting, substantive or procedural, is enacted after the examiners move in, it cannot go into effect until it is approved in the District Court for the District of Columbia. This to me is outrageous. The Federal judiciary of one single jurisdiction is to act as a third branch of a State legislature. At the same time, it is to have veto power tantamount to, and even greater than that of the Governor of a State. This unconstitutional provision is contrary in every respect to the reserved powers of the States and to the separation of powers between the legislative, executive, and judicial branches of our Government.

I expect that someone would have been thrown out of the Constitutional Convention of 1787 bodily, if he had even suggested that a State legislature could not effectuate its laws without the approval of a Federal court. Montesquieu and John Locke would probably throw up their hands in disgust in trying to understand wherein the proposal would fit into the doctrine of separation of powers as between the legislative, executive, and judicial branches of government. I trust that the committee will recommend deletion of the section.

As to the use of the Federal courts under the bill, the entire approach is discriminatory. No declaratory judgments or injunctions against enforcement can be issued in any court except in a District Court for the District of Columbia, according to section 10(b), p. 11. This is designed expressly and obviously to avoid Southern Federal judges; men who have been confirmed by the Senate. Moreover, if a State wishes to contest the applicability of this bill to it under section 3(c) in a three-judge court in the District of Columbia, it has to allege and prove nondiscriminatory practices in voting for a period of 10 years. While the South is the chief target of this bill, many other sections of the country might not be pleased with this provision as well as several other provisions of the bill.

I wish to point out specifically that in section 9(d), page 9 of this bill, the Attorney General can go into any appropriate U.S. district court for injunctions and preventive relief, well armed with the stringent provisions of the bill, and at the same time, citizens and political entities other than the United States are denied this right. They must come to the District of Columbia. This is arbitrary, rank discrimination. If a Federal court is good enough for the United States, it is good enough for its citizens and for aggrieved States and their political subdivisions. I trust that the committee will recommend correction of this proposed injustice—this condemnation by the United States of its own Federal court system and structure.

On page 6, line 11 (sec. 5(d)) of the bill, examiners are to remove from the voting lists bona fide citizens who have not voted in 3 consecutive years. The bill does not say election years; it simply says years. It does not say how these otherwise eligible voters may ever get back on the voting lists. This provision on the one hand has overtones of compulsory voting, more appropriate to a totalitarian state than to a democracy, and on the other hand, constitutes a possible breach of the right of franchise of law-abiding citizens, who may have been ill or who have good cause not to have voted. It is un-American in principle, and I hope that it is stricken from the bill.

I could point out many other infringements, weaknesses, and ill-considered provisions of this bill, but will not, at this time, go into further detail.

A favorite theory of mine is that the essence of true equality is the sound and impartial administration of just, significant, and understandable laws. I cannot place this bill in such a context. Circumnavigation of the Constitution is in itself a denial of the rule of law. Legislation such as this which is not designed to be applicable to the whole Nation at large is not sound, and Congress should think long and hard before it plunges emotionally into promulgating an extreme measure where moderation, understanding, and law and order are required and should prevail.

The CHAIRMAN. Senator Sparkman, you have made a very fine and helpful statement, one of our outstanding statements. I want to tell you on behalf of the committee that we appreciate your appearance.

Senator SPARKMAN. Thank you, very much, Mr. Chairman.

Senator HART. I apologize, sir, for coming late. I shall read your statement.

Senator SPARKMAN. I am delighted to see you here. Knowing the fine constitutional lawyer you are, I shall welcome your comment and questions.

I wish I had time to discuss the bill. I say in all frankness and candor and fairness, I think the bill is based on emotionalism and is shot through with weaknesses which I do not believe the Supreme Court could possibly uphold.

The CHAIRMAN. I want to comment that Phil Hart can learn something from this statement. I hope he studies it. I know it needs study.

Senator SPARKMAN. Thank you very much, gentlemen.

The CHAIRMAN. Mr. Kilpatrick, you may proceed, sir.

Do you have a statement?

STATEMENT OF JAMES J. KILPATRICK, RICHMOND, VA.

Mr. KILPATRICK. I have some rough notes.

My name is James J. Kilpatrick of Richmond, Va. I am editor of the Richmond, Va., News-Leader, but I am appearing today in my capacity as vice chairman of the Virginia Commission on Constitutional Government. We are appearing in opposition, of course, to the bill.

I might say I am especially happy to see Senator Dirksen here so I can talk to him directly. Naturally, we admire all the Members of the U.S. Senate. Some we admire more than others and I have admired Senator Dirksen for a great many years.

Senator DIRKSEN. Thank you, sir.

Mr. KILPATRICK. I hope I can persuade the Senator to relent in his anxiety to get this bill to the floor so a little more time would be given, sir, to trying to come up with a bill that would narrow its scope, more of a rifle shot and more in keeping with what, to us, in Virginia seems to be in accordance with constitutional construction.

Senator DIRKSEN. I am always open to persuasion.

Mr. KILPATRICK. I hope we can persuade you. We in the Virginia Commission on Constitutional Government have done the best we can to go over this bill, not with a feeling of blind automatic opposi-

tion to every provision, but with a view to criticizing it we hope constructively to see what kind of bill might be adopted if you were to take a somewhat different approach that would be more specifically predicated upon the 15th amendment. In our view, the chief fault in the bill is that after it gets away, from the very opening section, it almost leaves the 15th amendment and does not get back to it again. The 15th amendment is thereafter mentioned only a couple of times.

The CHAIRMAN. We will recess for a moment.

(A short recess followed:)

Mr. KILPATRICK. Looking at the bill just very briefly, because I do not intend to attempt any detailed analysis of it, it begins in section 2 with a statement that surely we can take no exception to at all, that no voting qualification or procedure shall be imposed or applied to deny or abridge the right to vote on account of race or color. We would accept this completely as being a fine statement of the Constitution. But then it goes into section 3(a) and we begin to get into what seems to us to be trouble:

No person shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device, in any State or in any political subdivision of a State * * *

it is not because of his race or color. We get into the arithmetic, because of his failure to comply with any test or device in any of these States. We take this as a presumption of discrimination of unconstitutional treatment on the basis of sheer arithmetic or census statistics which I hope to show will turn up with some remarkable results.

I listened to Senator Sparkman's testimony and he was talking about the action of section 8 of the bill, which provides that whenever an affected State or locality wants to change its laws on voting or its voting procedures, it must come and get approval of the Court. Senator Sparkman said that this applies only after the examiners move in. But I do not read the bill that way at all. It looks to me as if under section 8 of the bill, those remarkable provisions apply in any political subdivision for which a determination is in effect under section 3(a), with this sort of result, Senator: in the city of Richmond, just about 3 weeks ago, our city council approved a resolution proceeding for additional voting precincts. We have 68 precincts now. Some of them are very crowded. We ought to have about 88 voting precincts. Had this bill been in effect, Richmond would have had a determination made to it under this 50-percent provision and in order for our city council even to have enlarged the number of voting precincts as a convenience to our people, we would have had to run up and get approval, because as section 8 says, a determination would have been in effect that we had not voted 50 percent in November of 1964.

We take the view that the bill is perhaps loosely drafted in its constant repetition of the word "person." Being predicated upon the 15th amendment, the bill should apply, it would seem to us, specifically to citizens of the United States. We would take the view that the word "person" is one thing as a matter of law, but "citizen of the United States" is something else.

Throughout its language, the bill refers to these persons who shall not be denied.

Of course, we take the view that section 3(b) goes against article I of the Constitution, which permits the States themselves to fix their qualifications for the franchise. That has been covered so much by other witnesses that I shall not touch on that at all.

We believe that in section 3(c) of the bill, the spirit of the Constitution is violated in that it creates the effect it states, a presumption of guilt, not of innocence, that must attach to them. There are overtones here of attainder that is prohibited under the Constitution and although it is not criminality as such, overtones of *ex post facto* law.

I come back—I will touch later on section 5(d), which requires the removal of certain voters from the voting lists. I do say that the provision on page 7 of the printed bill, section 6(b), where the times, places, and procedures for application and listing pursuant to this act shall be prescribed by regulations promulgated by the Civil Service Commission is, in our judgment, entirely too broad a provision and needlessly tramples upon the powers of the State.

Page 10 of the bill, in section 9(e); we find that this section begins with "person" in the singular, whenever a person alleges certain things, that his vote has not been counted or that he has not been permitted to vote, certain procedures then are set in motion. But along toward line 6, we find suddenly that this has been turned into "persons."

"In the event that the Court determines that persons," in the plural, "who are entitled to vote, allege that they are not entitled to vote"—again we say this should be limited to the citizens of the United States, rather than to the broad language of "persons."

When I testified on Monday before the other body, several of the members of the committee were good enough to say to those of us who appeared in opposition, What would you do? Admitted that this evil exists and we do admit that this evil exists in certain counties, what would you do to try to get a constitutional bill? I am going to try to suggest one way in which you might approach this problem that I believe would be within the Constitution and would have many advantages.

Suppose, to be supposing, that you were to begin anew on this problem and draft out a bill containing a provision that would require every political subdivision in the United States—that is 3,072 counties and 24 election districts, and 34 independent cities, and the District of Columbia, making 3,131 political subdivisions in the country.

Providing for these political subdivisions to file some kind of annual reports, whether with the Civil Rights Commission or the U.S. Attorney General, as of December 31 of each year, such a report would show the name and address with summary totals by race of every person registered to vote therein. Such records already are printed and available to the November pollbooks, especially in the South, where until recently, they have been kept by race. But attaining such records, which is a vital thing to be in compliance with the 15th amendment, would not be an impossible task. I believe you would have to predicate these reports on something that went directly to race or color. You would have to make appropriate penalty provisions against fraud or misrepresentation/or failure to report and so on.

Now, once such records were available over the country as a whole, it would then be a simple matter for the Civil Rights Commission to apply the approach that is set forth in this bill and to compute for

each of these 3,131 subdivisions the percentage of persons who were registered therein by race.

Now, to bring it down to my own State, you then would come up with such entries as this: Where Accomack County has a population of 13,148 white persons, of whom 5,698 are registered or 43.3 percent. Accomack County in Virginia, over on the Eastern Shore, has a colored population of adults of 6,142, of whom 979 were registered for a nonwhite registration factor of 15.9 percent.

The next one alphabetically on the list would be Albemarle. In Albemarle County there are 15,670 white adults, of whom 6,485, or 41.3 percent, were registered and there are in Albemarle, 2,576 Negro adults, of whom 1,215 were registered, or 47.1 percent. You will notice that the percentage of colored registration in Albemarle County actually is higher than the percentage of white registration. But you would get up all these figures.

Then I would suggest to you that a factor of, say, 50 percent might be applied to these figures once they had been compiled. By this I mean that your bill could create a prima facie assumption that in any political subdivision in which the percentage of nonwhite registration was less than, say, half the percentage of the white registration, discrimination by reason of race or color might have occurred. In the examples I have given you, such a presumption could be applied to Accomack County, in which 43.3 percent of the adult whites are registered, but only 15.9 percent of the adult Negroes were registered and you had less than half of the nonwhites. But it would not apply in Albemarle, so you would create no such presumption there. I would say, gentlemen, I am not trying in this suggestion to rig any bill that would benefit Virginia especially or treat Virginia gently. In 32 of our 98 counties and in 4 of our 34 cities, according to the best figures I have been able to put together, the percentage of Negro adults registered is less than half the percentage of white adults registered.

What accounts for these conditions, I cannot say. There has been no complaint of deliberate discrimination in Virginia by reason of race or color. My own strong feeling is that the figures reflect only the apathy or indifference that obtains so widely among rural Negroes. In several cases, the figures are mathematically accurate but actually misleading: The census showed eight Negroes over 21 in Buchanan County, none of whom is registered, and 3 Negroes over 21 in Craig County, none of whom is registered.

These percentages and figures can make some trouble.

Suppose you set it up in the bill so that in these presumptive localities, certain dire and drastic things would occur once a complaint had been filed by, say, the 20 nonwhite voters provided in S. 1564, this would not apply. There would have to be a complaint filed in these presumptive counties and the dire and drastic things you might provide might include the appointment of a Federal registrar if the complaint were found valid to see that all nonwhite persons over 21, if these were the groups discriminated against, otherwise qualified by Virginia law, including the filling out of our elementary registration form, were then given full opportunity to be registered on the same basis that applies in that political subdivision to everybody else. Virginia has a requirement that poll taxes must be paid for the 3 years preceding an election and paid at least 6 months prior

to an election. If the Congress wished to contend that this requirement had been a device to abridge the vote on account of race or color, that would seem to me, testifying as an individual, perhaps appropriate legislation under the 15th amendment. And if the Congress wanted to permit Federal registrars in the presumptive counties to accept poll tax payments for the current year up to 45 days before a State or local election, in order to prevent discrimination by reason of race or color, I would not object too fiercely to that either. But this is a small matter, applicable only to State and local elections in five States.

Finally, I would put a reasonable cutoff date on the employment of Federal registrars in the presumptive localities in which complaints had been filed and the registrars had been appointed. Perhaps a period of 2 years, or 3 years, or 4 years, after the percentages of registration had passed at least the 2-to-1 point, would suffice for the requirements of the situation.

If you wanted to pick up some of the language of sections 6, 7, 9, 10, 12, and 13 of the printed bill, you would then have, in my judgment, a measure that would be appropriate legislation under the 15th amendment.

Let me now, if I may, suggest to you five things that you would have accomplished by such a limited approach to this relatively small evil. Under this approach, you would be confining yourself strictly to denials and abridgements of rights of citizens of the United States on account of race or color. You would not at any point be tinkering with the States power to fix their own qualifications for the franchise. All you would be saying and it is all the Congress can say is that we do not care what qualifications you fix in your State so long as these are imposed without discrimination on account of race or color.

In this regard, the bill should spell it out, and I agree that if any procedures or requirements for registering or voting are significantly changed, there must be a complete new registration under Federal supervision. This would prevent the application of any grandfather clause to a new scheme that might limit registration to high school or college graduates only. Second, you would have confined yourself solely to registration, and not to voting. This seems to me a very important point. Voting in America is a right, and more than a right—it is a profound privilege, in the deepest meaning of that word, but it never has been an obligation. Under the printed bill, this spirit of the Constitution is gravely wounded. The trigger provision in 3(a) tends to reward States in which at least 50 percent of the adults vote, and the remarkable language of section 5(d) actually would compel the striking of the name of any Negro voter, once registered by a Federal registrar, who failed to exercise his right to vote over a 3-year period.

While I am on this trigger provision, let me remark that in Virginia, 56.6 percent of all persons over 21 actually are registered, but only 45.07 percent actually voted in the Presidential election of November 1964.

Senator ERVIN. Would you give me those figures about the registration of Virginia?

Mr. KILPATRICK. Yes, sir, 56.6 percent of our adults over 21 were registered, but only 45.1 percent actually voted last November. It seems to me a reasonable possibility that at least 114,000 Virginians did

not vote in November because they could not stomach any of the presidential candidates on the ballot. This would include Democrats who could not stomach Mr. Johnson, but could not stomach Mr. Goldwater either, and Republicans who could not stomach Mr. Goldwater and could not stomach Mr. Johnson either, and a large number of ironclad conservatives who were appalled by the liberalism of both major parties. They regarded both of these majority candidates as very close to leftwing Socialists.

In any event, if 114,000 Virginians thereby exercised their privilege which is not to exercise their right to vote, we had a certain number of Virginians voting. Under this bill, their failure to vote is taken as presumptive evidence, not that Virginians have sensitive stomachs but that the State had denied or abridged the right of citizens to vote on account of race or color. If the 114,000 had conquered their uneasiness and gone to the polls, Virginia's presidential vote would have passed the magic 50 percent mark, and lo, we would have been wafted from under this bill, as successfully as New York or Massachusetts.

My third comment on this approach is by this limited approach you would have abandoned the blunderbuss or blockbuster approach and taken a rifle to the evil you are attempting to eliminate. In its 1961 report, the Civil Rights Commission concentrated its findings upon 140 Black Belt counties—140, mind you, of 3,131 counties and cities in the country—and not all of these were serious offenders. In one of the six Arkansas counties, for example, 44 percent of the Negroes were registered in 1960. In Liberty County, Ga., 63 percent of the Negroes were then registered. In Robeson County, N.C., the nonwhite registration was 56 percent. In my own Virginia, the Civil Rights Commission provided data for 1960 on 14 counties in which the percentages of Negro registration ranged from a low of 7.2 percent in Northampton to a high of 36.6 percent in Charles City. You may be interested to know what has happened in these 14 counties through wholly voluntary action since 1960. One of the 14, I am sorry to say, apparently has slipped backward. Boochland reported 32.5 percent of its nonwhite population registered in 1960; for 1964, evidently by reason of new registration, the percentage was 22.2. But all of the other counties in the group reported gains.

I will give you a list to be inserted if you do not mind.

(The list referred to follows.)

County	Negro registration	
	Percent 1960	Percent 1964
Amelia	83.2	48.2
Brunswick	16.2	49.3
Caroline	32.9	49.8
Charles City	36.6	44.3
Cumbersland	21.9	46.0
Dinwiddie	10.2	14.9
Greensville	24.4	48.6
Isle of Wight	24.6	43.8
King and Queen	27.5	48.2
Stafford	17.7	28.4
New Kent	35.2	40.7
Northampton	7.2	16.9
Southampton	11.8	27.5
Surry	24.4	61.8
Sussex	19.0	36.5

Mr. KILPATRICK. If you look at the counties singled out by the Civil Rights Commission in 1961 and study their registration for 1960 and look at them in 1964, you find a couple of counties, it is true, in which the nonwhite registration is still lamentably low. Such counties as Northampton, where the Negro registration last year was 17 percent, roughly, and Dinwiddie County where the Negro registration was 14.9 percent. I cannot explain to you gentlemen why the nonwhite registration is low in Northampton or Dinwiddie County, Va., because no breath of a complaint ever has been raised of discrimination by reason of race or color in these counties. They are both of them rural counties, quiet, peaceful, stable, with practically no political activity in them of any sort. The member of our House of Delegates from Northampton, who just announced his retirement, served 30 years without opposition. The member from Dinwiddie, Mr. Richardson, has served 18 years. In these counties, local officials serve term after term. Political interest of any kind is very slight. My point is that the situation may be regrettable but it is not unconstitutional, and ought not to be taken as presumptive evidence of wrongdoing and lawbreaking on the part of the local officials there.

Let me continue to dwell for a moment, if I may, upon this business of apathy as a factor in these low percentages of registration and voting. Out of curiosity, I have worked up some data on election contests in Virginia. You gentlemen who face a good deal of opposition in your States will be interested to know that Virginia has had only seven Senators in this entire century. During the past 34 years, between 1930 and 1964, there were 26 opportunities for contests in elections to the Senate in Virginia. If it is fair to define an election in which the winner gets at least 70 percent of the vote as not really a significant contest, we find that only five times in 34 years has there been a significant contest in Virginia for the U.S. Senate. And of course this has resulted in Virginia's having two great and highly regarded Senators in whom we take great pride.

Comparable figures for the other body are even more revealing. In the 30-year period between 1934 and 1964, 307 opportunities for contests were presented in our 10 congressional districts, counting both primaries and general elections as opportunities for contests. But we actually witnessed only 46 significant contests for the House of Representatives in the whole of Virginia in this entire 30-year period. The First Virginia District, which was represented for so many years by Mr. Bland and now is represented by Mr. Downing, has witnessed only one significant contest in 30 years. The Second District hasn't had a contest since 1948. The Fourth District, which is a southside district having a large Negro population, hasn't seen but one contest for the House of Representatives since 1930—and that one was 20 years ago. The other district with a large Negro population is the Fifth, which has had but three significant contests for the House in this span of time.

We do have contests for Governor, attorney general, lieutenant governor, but not as many as you would think.

Most notably this situation obtains—

The CHAIRMAN. When do your county officers run?

Mr. KILPATRICK. I was just coming to that, sir. That was my next paragraph. We elect the county officers in one year—actually, the year before. The city officers, the county officers, and then the presidential year and then the gubernatorial year, and then we start the single over again.

This to me is among the most interesting data I was able to chase up on this. For the entirely typical year of 1963, in which we elected members of the general assembly and also elected in the county and all of our local officers, there were that year 36 State senatorial districts. Only 13 of them had contests of any sort. There were 70 house districts; only 24 had contests. In 98 counties, we elected a commonwealth's attorney—that is a prosecuting attorney. In these 98 counties, only 18 had contests. These same 98 counties elected sheriffs. But there were contests in only 41. Ninety-two counties elected commissioners of the revenue, but there were contests in only 20.

Senator DIRKSEN. Mr. Kilpatrick, are you referring to primary contests?

Mr. KILPATRICK. These are figures for the general election, sir. Figures for the primary would not differ significantly and perhaps would show even fewer contests for these rural officers.

Senator DIRKSEN. There are few primary contests?

Mr. KILPATRICK. Very few, yes, sir.

In these same 92 counties, there were also elected treasurers and there were contests in only 20 of them. The custom, Senator, and it is an ancient Virginia custom, is for a clerk of the court or for a commissioner of the revenue to be elected and then to hold office just indefinitely, with no opposition in the primary and no opposition in the general election, and very often, a sort of primogenitor system sets in in which we will have one man who serves as clerk of the court for many years and then if his son has gone into the law, frequently his son will take over and serve as clerk of the court for another 30 or 40 years.

Senator ERVIN. If I may interrupt, in my county back in the old days, we had a situation where the clerkship of the court of appeals and sessions were held by a father, son, and grandson in succession for 68 years.

Mr. KILPATRICK. And I would imagine without opposition in the whole span.

In this sort of politically tranquil atmosphere, is it any wonder that registration and voting are low? But I ask, is it unconstitutional to be tranquil. Our local mayor remarked not long ago that Virginians by and large suffer from narcissism; they are forever looking in the mirror and liking what they see. It may be embarrassing to be so satisfied, but it is not a denial or abridgment of any man's vote by reason of race or color. As I said, we elect the city officers one year, county next, Presidential next, and Governor after that. This is not true in many States such as Illinois, in which the gubernatorial and Presidential elections coincide, with the result that much political interest is stimulated and voting is high. Had we been electing a Governor in Virginia last year, perhaps those 114,000 stay-at-homes would have recovered from their indigestion long enough to get to the polls, but they did not because we had no gubernatorial election and not much excitement. While our system in Virginia may be novel, it is not

unconstitutional, and the resulting figures ought not to be misinterpreted so as to impute wrongdoing to our public officials.

The next point is brevity. That is, confining it to registration, the plan I have sketched out to you, on a current basis, you would have gotten away from the arbitrary dates in this bill of November 1964. There will be another census within 5 years and this bill as permanent legislation will be out of date, obsolete, on its own terms.

Finally, my fifth point, and to me the most important point, is that you would not be tampering under such a limited rifle-shot approach. With the federalism that I believe has contributed so much to the vitality and the strength of our Union, federalism that you, Senator Dirksen, have defended so many times and so eloquently throughout your career, I believe that you would be undermining that federalism by this sweeping attack upon the powers of the states under article 1.

I think under the approach I have sketched, you would be exercising no more than the legislative authority that is vested in the Congress under the 15th amendment, but you would be exercising this in power in new and effective ways. The approach I am suggesting would permit Federal intervention to be concentrated only in those relatively few localities in which such intervention truly may be justified in order to prevent discrimination by reason of race or color. In other areas where occasional individual acts of discrimination may occur, you would rely upon other remedies under the 1957 and 1960 acts. You would not be trying to achieve instant purity through compulsions of Federal law. You would be leaving some things to the healing processes of time and voluntary efforts. You would operate with a scalpel instead of a Bowie knife, and you would avoid those ragged wounds that are certain to be left by the bill before you.

That is all I have to say in the nature of a statement.

The CHAIRMAN. What are the voting qualifications in Virginia, Mr. Kilpatrick?

Mr. KILPATRICK. They are elementary. We require in Virginia only the elementary ability—you have to fill out a form stating your name, address, age, occupation for the preceding year. That is all there is to it. But this has to be done in your own handwriting. Because the form has to be read and because you have to fill out this simple form in your own handwriting, we would come, we believe, under the language of section 3(b), which lays it down that a test or a device as a prerequisite to demonstrate ability to read, write, or understand any matter—we earnestly submit that the ability to read a simple form that says name, with a line, age with a line, address with a line is the minimum of literacy that reasonably might be required for the exercise of the franchise. When a test or device is spread to the mere understanding of any matter, it would seem to me that perhaps language is here broad enough to permit idiots to come under this, who could not understand any matter, because the only language in here under which idiots or —could be prevented from exercising the franchise would be under the language on page 7 in section 6(b) by which the Civil Service Commission is to lay down certain regulations.

Senator FONG. Because the November 1, 1964, date is there, you still would come under that law, would you not?

Mr. KILPATRICK. Senator, I am not trying to duck. I am not a lawyer. I am going to ask if I can pass that question to the Attorney General of Virginia who is here and Mr. Gray, the former attorney general who is not here. I think they can give you a more informed answer than I could.

The CHAIRMAN. Ask Mr. Button. He is here.

STATEMENT OF ROBERT Y. BUTTON, ATTORNEY GENERAL OF COMMONWEALTH OF VIRGINIA

Senator FONG. In your interpretation of this law, Mr. Button, if Virginia were to repeal its present qualifications to vote, which is very simple, as Mr. Kilpatrick stated, would you still be subjected to this law because of the November 30, 1964, date?

Mr. BUTTON. Senator, first I might say that these provisions are in our constitution and it is a difficult process to amend our constitution.

Senator FONG. I understand.

Mr. BUTTON. If our constitution were amended, and it would take a period of years to do that, and we had no qualifications such as you refer to, we would not then have a test or device.

Senator FONG. But the November 30, 1964, date—

Mr. BUTTON. We did have it then and I think we would still be under the law.

Senator FONG. You would still be under the law?

Mr. BUTTON. I think so, sir.

Senator ERVIN. But if you could get out, Virginia could still have illiterate people voting, but New York's illiteracy test would be allowed to stand, notwithstanding that Virginia's literacy test and New York's were under the same constitutional provision?

Mr. BURTON. We do not have a literacy test, but I think under the language of this bill, it could be so construed.

Mr. KILPATRICK. I should be delighted to answer any questions, sir.

Senator ERVIN. I would like to ask you some. I have been contemplating introducing a constitutional amendment to require every President and Vice President and Justice of the Supreme Court and Members of Congress, in addition to taking an oath to support the Constitution, to commit to memory these words from *Ex parte Milligan*, reading from pages 120 and 121 of fourth circuit, also in 71 U.S. where Judge Davis was speaking about the reasons why they drew a constitution and how they had attempted to try civilians before military courts in even more trying days than we have had in Alabama:

Time has proven the discernment of our ancestors, for even these provisions expressed in such plain English words, that it would seem the ingenuity of man could not evade them, are now, after a lapse of more than 70 years, sought to be avoided. Those great and good men foresaw that troublesome times would arise when rulers of the people would become restive under restraint and seek by sharp and decisive measures to accomplish ends deemed just and proper and that the principles of constitutional liberty would be imperiled unless established by irrepealable law. The history of the world of what was done in the past might be attempted in the future. The Constitution of the United States is a law for rulers and for people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine, involving more pernicious consequences was ever

invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government.

Do you not believe we would have better legislation in this field if everyone in the position of authority in this country were required to commit those words to memory?

Mr. KILPATRICK. I think it would be a good idea to have them committed to memory.

Senator ERVIN. Does this bill not provide in effect that they are going to suspend in the State of Virginia, the State of Mississippi, the State of Alabama, the State of Georgia, the State of South Carolina, and 34 counties in North Carolina, the provision of the second section of the first articles of the Constitution and the provisions of the 17th amendment stating that electors of Senators and Representatives in Congress shall possess the qualifications required by State law for the electors of the most numerous branch of the State legislature.

Mr. KILPATRICK. Precisely so, sir, and these provisions of article 1 would be suspended not through any direct relationship to denial or abridgement of the right to vote on account of race or color under the 15th amendment, but by these arbitrary statistical and census-taking triggers that may or may not give you any presumptive evidence of denial or abridgement.

Senator ERVIN. I will ask you if the writer of this *Ex parte Mil-liner* did not foresee what you and I see today:

Those great and good men foresaw that troublous times would arise when rulers of people would become restive under restraint and seek by sharp and decisive measures to accomplish ends deemed just and proper and that the principles of constitutional liberty would be imperiled unless established by irrepealable law.

Does this bill not represent an attempt by rulers and people who are restive to seek by sharp and decisive measures to accomplish ends they deem just?

Mr. KILPATRICK. Yes, sir; General Washington saw this in his farewell address.

Senator ERVIN. The purpose of this bill essentially is to suspend constitutional provisions which were supposed by those who drew them and ratified them to be irrepealable, except by constitutional amendment.

Mr. KILPATRICK. On that point, I would like, if I may, to urge the desirability of not a long delay stretching into months, but if I am not mistaken, in the areas in which this bill is expected to do its necessary remedial work, no elections are scheduled over a period of months. I have read somewhere that in Alabama, the next election is not until May of 1966. So there really is still time to take the time now in the spring of 1965 to go at this bill with the greatest care. If you enacted it by some arbitrary date of May 1 in some hurry to get this on the books, its provisions would not be applicable to any election for a long period of time.

I do earnestly submit that the turbulence of the hour creates the worse possible atmosphere for the enactment of sound and permanent and prudent legislation in a field in which the Senate, I hope, sir, will walk with the greatest care.

Senator ERVIN. I would like to ask you this question, Mr. Kilpatrick. Have not the overwhelming majority of Virginians, like the

overwhelming majority of North Carolinians, come to the deliberate conclusion that no man, no qualified person should be denied the right to vote on account of race or color?

Mr. KILPATRICK. Precisely so, sir. There has been no complaint anywhere in Virginia, to my knowledge or to the knowledge of our highest State official, of denial or discrimination to vote by reason of race or color. In my own city of Richmond last year, after the poll tax in Federal elections had been eliminated, we registered nearly 11,000 Negro citizens over a span of months, and most of them in the 2 months immediately preceding the election. We opened up additional registration places in the city of Richmond, ran them at nights and on weekends, in order to provide abundant opportunity for every citizen, white or nonwhite, to get registered in Richmond. This was true over the Commonwealth of Virginia as a whole. I have the figures with me on registration by white and nonwhite in Virginia. You would find in some of the counties of the South Side, where the Negro population is greatest, very substantial percentages of non-white registration, up in the 40 percents, where the difference may be 55 percent of the whites registered, 42 percent of the Negroes. This would obtain over a great many counties of Virginia.

I do not say that the situation is perfect, I do say that there is no discrimination by our State and our local officials. Yet the bill would apply to us and impute to us the kind of wrongdoing to which we are very sensitive and resent.

Senator ERVIN. Is it not true that many parts of Virginia, like many other parts of these affected States, are virtually one-party sections?

Mr. KILPATRICK. Yes, sir; the entire southside, until recent years, has been one party.

Senator ERVIN. And they become so largely as a result of the drastic policies pursued during Reconstruction, did they not?

Mr. KILPATRICK. Yes, sir.

Senator ERVIN. And at the present time—in those days, the Democratic Party stood as a defense in the South against unconstitutional measures such as the Reconstruction Act, did it not?

Mr. KILPATRICK. We believe that it did.

Senator ERVIN. For that reason, the South gave their allegiance to the Democratic Party for generations afterwards?

Mr. KILPATRICK. Yes, sir; that is true.

Senator ERVIN. Today, the people are confronted by the fact that they are not defended by either the Democratic Party at the national level or the Republican Party at the national level with respect to their constitutional rights such as that of prescribing for qualifications for voters.

Mr. KILPATRICK. Yes, sir.

Senator ERVIN. And as a result of that, a great many of them feel that they have no place to go, no national party to protect them?

Mr. KILPATRICK. There is regrettably that feeling.

Senator ERVIN. I know, because I went into the North Carolina counties that are affected and tried to persuade them to vote the straight Democratic ticket. I found a great many of them who have always been Democrats did not want to vote for Republican candidates and not want to support the Democratic nominees for President and Vice President, so they stayed at home.

MR. KILPATRICK. Sir, some strange alliances are beginning to develop in the South and as the nonwhite vote increases and it is going up very remarkably, all sorts of things are going to happen in the South.

Senator ERVIN. Would you agree with me that it is a serious matter from the legislative standpoint for both national parties to join in the introduction of a bill of this character, which tends to destroy the value we get out of a two-party system of Government?

MR. KILPATRICK. In Virginia, sir, we have seen so much confusion between the parties over a long number of years that I do not know this adds greatly to the confusion. Sometimes it is difficult for us in Virginia to distinguish between the principles of the two great national parties. They seem to be very close.

Senator ERVIN. Do you not agree that a part of the great service this renders to the country is picking up flaws in legislation proposed by the administration?

MR. KILPATRICK. Not merely picking out the bad spots from a bad apple, but striking at the whole tree, root, and branch.

Senator ERVIN. Do you not agree with me that it is a bad thing from a legislative standpoint when 61 Senators join in sponsoring the bill and make it a bipartisan effort in that it prevents it from having effective opposition?

MR. KILPATRICK. I think it is unfortunate, sir, and I think it is equally unfortunate that members of the Supreme Court of the United States appeared—turned up to here the President's message and appeared on the television cameras applauding. I think this is a violation of the separation of powers of the United States and creates imbalances.

Senator DIRKSEN. Will you yield?

Senator ERVIN. Yes.

Senator DIRKSEN. I was much intrigued by your statement, Mr. Kilpatrick, that perhaps we ought to take more time and put this off into the future, since there are no elections in the immediate offing. It occurs to me that this month, we mark the 100th anniversary not only of the death of Abraham Lincoln but of the enactment and approval of the 13th amendment to the Constitution, which abolished slavery. It was 3 years later in 1868 that it became necessary to enact and approve the 14th amendment, with the due process clause, due all citizenship, and related matters. It is 95 years ago that the country approved the 15th amendment to safeguard the rights of U.S. citizens, that they not be denied or abridged in the voting field because of race or color. Now you entreat us to be a little more patient about this.

But in that century, there came first of all ordinances and laws that prevented the Negro from even being found in the city because he might be charged as a loiterer or vagrant and fined and he could be farmed out to somebody until his fine was paid, which was indeed a kind of servitude.

It was as late as 1910, and my distinguished friend from Maryland can correct me if I am wrong that the State of Maryland undertook to condition the vote and limit it to the lineal male descendants of those who had the voting privilege on or before the first day of January 1867.

It was as late as 1916 that the State of Oklahoma tried to write exactly that thing into their own constitution.

No, these people have been waiting a long time. A century is a long time to wait for the safeguarding and protection of the right to vote. We draft young men of color into the Army and as far as I know, some of them are fighting in Vietnam right now.

Mr. KILPATRICK. I appreciate that point of view fully and sympathize with it.

Senator DIRKSEN. If you will bear with me for a moment. I remember how many fought in World War I, because I was on the Western Front in the combat zone and they were there. So they have freely offered their service to the country in time of conflict. They must pay their taxes just like a man of white skin. But when it comes to privileges and immunities, provided them, we have been terribly derelict all this long time. And it is not surprising that they should use as one of their slogans, "We cannot wait any longer."

Suppose we push this off and push this off and push this off. There has to be a time when the issue has to be resolved and all these marches and demonstrations only point up what the situation really is. They are unfortunate, particularly when life is lost. But we shall forever temporize with this problem?

Now, I share your feeling that you have to pinpoint it and not use a blunderbuss approach. That is exactly what we have been trying to do. We have been trying to localize this in the subdivisions where this sin occurs and in the States where it occurs. The problem is to find a formula so that you can localize it and then go and solve the problem. That is all we have undertaken to do here.

It is an amazing thing that you have to go all around Robin Hood's barn in order to get it done because of the obstacles and difficulties and the barricades and the constant insistence that you are violating the Constitution of the United States.

Well, I take the 15th amendment quite literally—no citizen of the United States shall have his voting privilege denied because of race or color. That introduction of the Constitution is hurled at the United States itself and at every State in the sisterhood of the Union. Now, I like to take that straight, I like to take it as gospel. How do you effectuate it? That is the sole problem that we have had to wrestle with and it becomes difficult to overcome all these obstacles.

I do not blame my good friends for pretending, as we do, that we are pointing an accusing finger at so many counties in a State or at a State as a whole, but if that is where the sin is, then that is where the finger has to be pointed. And if they will only cleanse the situation at home, then there would be no need whatsoever for this bill. But the cleansing process has been operative for a hundred years and it has not been effective yet. How long can they wait?

Mr. KILPATRICK. Senator, I take no quarrel with anything you say, sir. I understand and appreciate this point of view. I would make only this observation to it, that time is a continuing sort of river that flows right along and there is some implication in the we-cannot-wait approach, that nothing whatever has been done since this amendment became effective in 1870. It is as if nothing had been accomplished over this whole span of 95 years and therefore, we must rush in with this drastic legislation right now and possibly even hang it

on some anniversary date as a commemorative gesture, because nothing has been accomplished.

That is not true, of course, sir. We can see, looking back over this span of 95 years the growth and development of the nonwhite citizen of the United States in the exercise of his franchise proceeding all over the United States, especially since these demonstrations, if you want to put it on them, especially in the 10 years since the *Brown* case. We can see the schedule of nonwhite registrations in the South go leaping up year after year after year. Things are being done by voluntary efforts without the necessity for the drastic legislation here proposed. The situation is curing itself gradually.

Now, if you want to cure it faster, fine. But I do beseech you to go at some careful delicate cure that will go right, as you say, to the sin and concentrate on this clearly defined sin and concentrate on it in a way that represents appropriate legislation under the 15th amendment so that you concern yourself solely with the denial or the abridgment of the right to vote by reason of race or color and that you do not interfere with the power of the States to fix the qualifications for voting.

This is the way it has gone historically. You mentioned the situation in Oklahoma. That was resolved, sir, without demonstrations in the streets. It was resolved by *Goins v. the United States* at 238 U.S. 347, when the Court said through the Chief Justice,

Beyond doubt, the 15th amendment does not take away from the State governments in a general sense the power over suffrage which has belonged to those governments from the beginning and without the possession of which power, the whole fabric upon which the division of State and national authority under the Constitution and the organization of both governments rests would be without support.

Senator ERVIN. It also said in that case, and I quote verbatim from it.

No time need be spent on the question of the validity of the literacy tests considered alone since we have seen its establishment was but the exercise by the State of the lawful power vested in it not subject to our supervision.

Mr. KILPATRICK. And indeed, if you want to continue, sir, because I had the same paragraph "And indeed, its validity is admitted."

Senator DIRKSEN. Well, Mr. Kilpatrick, may I comment that it was in 1896, in the rather historic case of *Plessy v. Ferguson* that the Court said that separate but equal facilities met the constitutional test for education. Well, it is 70 years now. But in 1954, nearly 60 years after *Plessy v. Ferguson*, the Court just struck that decision down in the *Brown* case.

Mr. KILPATRICK. Yes, sir.

Senator DIRKSEN. It did so in the *Tidelands* cases.

Mr. KILPATRICK. Yes, sir.

Senator DIRKSEN. It has done so on many an occasion, so the old rule of stare decisis so far as it applies to the Supreme Court is sometimes breached by a subsequent court.

Mr. KILPATRICK. Indeed, sir, it was in *Smith v. Albright*, just 20 years ago, a voting rights case, that Mr. Justice Roberts made his favorite comment about the opinions of the Court reminded him of railroad tickets, good for that day and passage only. But it has been only since the *Lassiter* case, just a few years ago, that the Court un-

equivocally upheld the power of the States to qualify for this franchise. We are talking about the opinion of the Court just a few years ago. Surely there is this much stability in constitutional adjudication by the Court.

Senator DIRKSEN. Of course, we all wish to remain within the four corners of the Constitution.

Mr. KILPATRICK. Sometimes we succeed and sometimes we don't.

Senator DIRKSEN. But who shall say whether we succeed in approaching the lines. We make this constitutional and—but when it comes to haste, I think we are all acquainted with the preacher who preached from the text, the wicked flee where no man pursueth, but one of the parishioners reminded him, they will run a little faster when somebody is after them.

Mr. KILPATRICK. Pursue these offending localities in every way you can, sir, and the Virginia Commission on Constitutional Government, is one minor little body that will applaud and exhort you on. Pursue the wicked, yes, sir, in every appropriate way you can under the 15th amendment.

Senator DIRKSEN. I will make one other comment. Your commission got out some of the finest literature, some of the best documented literature I have ever seen with respect to the Civil Rights Act of 1964.

Mr. KILPATRICK. I thank you, sir.

Senator DIRKSEN. I read every book and every document that you got out. There was a contention that title II, dealing with accommodations, was unconstitutional.

Mr. KILPATRICK. We earnestly advanced that.

Senator DIRKSEN. You certainly did, with vigor, and you did it well. But this body of men over here in this marble building had a different view when finally the accommodations questions came to the high tribunal.

Mr. KILPATRICK. We will keep a candle in the window, sir, for those wandering sons.

Senator ERVIN. Is not the complete text which my friend from Illinois mentioned, the wicked flee where no man pursueth but the righteous are as bold as a lion? Are not those of us who are trying to be as bold as a lion despite the smallness of our numbers standing for the preservation of constitutional government?

Mr. KILPATRICK. Yes, sir.

Senator DIRKSEN. May I comment upon that? I applaud my distinguished friend and I applaud him sometimes even for his persistence in error.

Senator ERVIN. I thank the Senator. I am glad to have his applause.

I would like to say that I do not think that you are pursuing the wicked when you bring in a bill here and ask that 34 North Carolina counties be covered by it, even though the Attorney General of the United States came here and testified the other day that he did not have any evidence that any of those counties were engaged in violating the 15th amendment. I hope you will confine your pursuit to the wicked and let those righteous go.

Now, about this time, we have 8 days. We are restricted by the terms of the reference of this bill to the committee. We say we will

allow 8 days only in order to try to devise wise legislation to enforce the 15th amendment, and to find the constitutional truth. Do you not think there ought to be no such time limitation placed upon the search for wise legislation?

Mr. KILPATRICK. As an abstract proposition, I would agree with the Senator that no time ought to be fixed, but the political realities are that some action is wanted. I sympathize with the gentleman from Illinois, but I just do not think that you have allowed yourself enough time for the complexities of this particular problem. An additional month or 6 weeks might permit the time to get certain data together that I do not believe have been accurately gathered so far.

I have discovered in Virginia, which is my own State and I ought to be the most familiar with it, that the figures in these areas are shaky figures, some of them, and need to be refined and carefully analyzed and looked at to understand what the problem is.

I am sure this is true elsewhere, but the figures are vital to this bill. They trigger everything in it.

The CHAIRMAN. The Attorney General testified that the figures of the Civil Rights Commission were not trustworthy. He would not act on them.

Mr. KILPATRICK. Yes, sir.

Senator ERVIN. You say you are not a lawyer, but I have read your books and many of your editorials, and I wish that all lawyers in the United States had 5 percent as much grasp and knowledge of the Constitution as you have manifested.

Mr. KILPATRICK. I thank the Senator.

Senator ERVIN. Has not the Supreme Court of the United States held time and time again in reference to this amendment that the power of Congress to legislate at all on this subject of voting in the State elections, rests upon the 15th amendment and that Congress cannot legislate under the 15th amendment except where qualified voters have their right to vote denied or abridged by reason of race, color, or previous condition of servitude?

Mr. KILPATRICK. That is right, that line of interpretation goes from *U.S. v. Reese* in October of 1855, just 5 years after the opinion had been put on the books and everyone was familiar with its meaning.

Senator ERVIN. And this formula set out here has no reference to either the denial or abridgment of right to vote on account of race or color?

Mr. KILPATRICK. No, sir, that is a fatal defect.

Senator ERVIN. I ask if this bill will allow Federal examiners to pass on the qualifications of voters in the affected area irrespective of whether any of those voters have ever been denied the right to vote on account of race or color?

Mr. KILPATRICK. That is quite true, sir.

Senator ERVIN. And in that respect, it cannot possibly fit the criteria which the decisions of the Supreme Court have laid down as being the only basis on which Federal legislation is permissible, is that not true?

Mr. KILPATRICK. That would be my judgment, yes, sir.

Senator ERVIN. Now, do you think that assumptions of inequities between 1865 and 1960 justify the Congress here in the year of our Lord 1965 perpetrating further inequities?

Mr. KILPATRICK. I would certainly think not, sir.

Senator ERVIN. I will ask you if this bill does not provide more discrimination of an unjustified nature than it would defend?

Mr. KILPATRICK. I think indeed it would. The real possibility is raised of situations that would arise under the 14th amendment, to which persons would be denied equal protection of the law, sir.

Senator ERVIN. Now, this bill would apply to the State of Virginia, where you say 56.6 of the adult population is registered to vote?

Mr. KILPATRICK. Yes.

Senator ERVIN. But would not apply to the State of Texas, where 53.3 percent is registered to vote?

Mr. KILPATRICK. That is my understanding, because Texas has no test or device as defined in the bill.

Senator ERVIN. And it would apply to the State of Virginia where 41 percent of the adult population voted in the last election, although it was only what you might call a Federal election?

Mr. KILPATRICK. 45.1, sir.

Senator ERVIN. It would apply to the State of Virginia where 45 percent of the adult population of the State voted but would not apply to the State of Texas, where 44 percent voted?

Mr. KILPATRICK. That is true, sir. The presumption is that because Texas has no test or device, there has been no discrimination there, because of the percentage.

Senator ERVIN. The presumption rests upon figures, does it not?

Mr. KILPATRICK. Entirely upon figures.

Senator ERVIN. The presumption is that the figures are illogic, is it not?

Mr. KILPATRICK. I can find no logic in it. I can find better ways of establishing such a presumption by triggering it to specifically racial considerations, which this does not do.

Senator ERVIN. What logic or reason is there to say that the State of Virginia, where 45 percent of its adult population voted is to be covered by a Federal voting rights bill, whereas the District of Columbia, where only 88 percent of the population voted is not to be covered by the bill? Do you see logic or reason there?

Mr. KILPATRICK. You are correct, sir, and I am positive there has been no discrimination because of race or color in the District of Columbia.

The CHAIRMAN. Nor has there been in the State of Virginia?

Mr. KILPATRICK. That is right.

Senator ERVIN. New York has a literacy test. North Carolina has a literacy test. Yet under this bill, North Carolina, which voted 51.8 percent of its adult population, is to have 34 of its counties deprived of that sovereignty, the right to use literacy tests, whereas New York County, which voted 51.3 percent of its adult population, is to be permitted to use this literacy test. Do you see any logic or rhyme or reason?

Mr. KILPATRICK. These are among the anomalous situations created by the bill.

Senator ERVIN. And because of this, 34 counties of North Carolina are to be deprived of the right to use the literacy test, because less than 50 percent of their adult population voted in the last election and 138 Texas counties are going to be allowed to keep their election laws and administer them in their own way, although they registered

less than 50 percent of their adult population. Is there any rhyme or reason in that?

Mr. KILPATRICK. No, sir, and in North Carolina, the counties apart from the 34, the literacy test can be continued, not because it has been applied discriminatorily, as it might, but because those counties voted more than 50 percent in 1904.

Senator ERVIN. This bill also will be applied to North Carolina, and it is not to be applied anywhere in the State of Texas, which voted only 44.4 percent of its adult population. Can you see any logic in that situation?

Mr. KILPATRICK. No, sir.

Senator ERVIN. The same thing applies with reference to the States of North Carolina and Tennessee, adjoining States. Tennessee used to be a part of North Carolina and the people are the same kind of people. North Carolina is to be deprived of the right to use literacy tests in 34 counties and Tennessee is not to be deprived of that privilege in any county, although North Carolina outvoted the State of Tennessee.

Mr. KILPATRICK. Yes, sir.

Senator ERVIN. I would like to say I share your concern. I think you have made some wise suggestions. This bill needs a good deal of revamping.

In regard to this triggering section, 3(a), do you think a State which registers its citizens without discrimination, do you think that that State ought to be denied the right to have a literacy test merely because its citizens for some reason or other satisfactory to them do not come out to the extent of 50 percent of adult population?

Mr. KILPATRICK. No, indeed, sir, that was the whole thrust of my testimony, that a State has every right under the Constitution to create and require a literacy test and that this ought not to be keyed to the number of persons voting.

Senator ERVIN. This illustrates another of the illogical things in this bill. According to figures supplied to the House committee by the Attorney General himself, North Carolina has registered 76 percent of its entire adult population. Whereas the State of New York has registered only 74.6 percent of its adult population. New York is to have a literacy test, North Carolina is to be forbidden to use its literacy test, which is virtually identical with New York's, in 34 of its counties. Is there much logic in that? Where is the pursuing of the wicked? Who is the wicked and who is the righteous in that case?

Mr. KILPATRICK. I leave that to you distinguished gentlemen to define.

Senator ERVIN. Do you think that under this section 6(a) is there any justice in saying in a State like Virginia that counties that are not sinful according to this standard shall be deprived of their right to use literacy tests and to register their own citizens merely because some other counties in that State do not vote as much as 50 percent of their population?

Mr. KILPATRICK. This would seem to me thoroughly inconsistent and discriminatory and an application of the principles of equal protection of the law.

Senator ERVIN. That is chasing both the righteous and the wicked with the same blunderbuss, isn't it?

Mr. KILPATRICK. Yes, sir, and in some States hitting more of the righteous than the wicked.

Senator ERVIN. Don't you think this bill at least ought to be amended so as to allow the counties where they have registered at least 50 percent of their adult population or where 50 percent of their adult population voted, to be exempt from the bill?

Mr. KILPATRICK. I would suggest, sir, if you are going to get at that angle of the bill in all seriousness, it ought to be amended so as to require your Federal registrars, if they are going to be brought in under this bill, to apply the existing State qualification requirements. If it is to fill out the form literacy sort of test, let the State registrar hand the form to the applicant who has been discriminated against and let him supervise it so that the same qualifications apply uniformly throughout the State and you do not get yourself into the absurd situation I sketched earlier, where a literacy test could be imposed in one county in Virginia and not in Gloucester, right next to it. These requirements ought to be required simply to administer the State's requirements in a nondiscriminatory fashion.

Senator ERVIN. In subsection (b) of section 3, do you not think if the framers of the bill wanted to implement the 15th amendment they ought to at least have an amendment on the end of that subsection and say the only tests or devices to be covered by that are those which are obviously designed to deny or abridge the right of citizens to vote on the basis of race or color?

Mr. KILPATRICK. Certainly, sir; either at the bottom of that section or at the top of it. That is a curious omission in section 3(a), that it does not echo any language whatever of the 15th amendment.

Senator ERVIN. I invite your attention to subsection (c) of section 3. Is it not your interpretation that that subsection closes the door of every courthouse in the United States against States and local subdivisions of States that are covered by this bill except that in the district court in the District of Columbia?

Mr. KILPATRICK. Yes, sir.

Senator ERVIN. Do you not believe that that is out of harmony with most of our ideas that courts shall always be open?

Mr. KILPATRICK. It is certainly out of harmony with the whole spirit of the Constitution, and I think, has an entirely unwarranted reflection upon the integrity of U.S. district judges in the South. It is not deserved and I do not think the Congress ought to be involved in what is an insult to members of the judiciary.

Senator ERVIN. Do you not think this bill should be amended to say that not only the United States but any State or any political subdivision of the State which is covered by the bill shall have the same right of access to all the courts having jurisdiction that the United States has?

Mr. KILPATRICK. I should think if the bill is to be preserved at all, that would be a useful amendment.

Senator ERVIN (presiding). Do you not construe subsection (c) of section 3 to provide that a State will be permitted, to borrow the terms of my friend from Illinois, to cleanse itself if one single State registrar in any of the political subdivisions has denied a single man the right to vote on account of race or color?

Mr. KILPATRICK. That is the harsh and punitive requirement, not merely possibility, but requirement that is created under this bill.

Senator ERVIN. Do you not think that ought to be deleted so as to permit a State to rebut the presumption or the assumption or the inference or whatever is created by subsection (a)—3(a)—by at least proving that they are not violating the 15th amendment?

Mr. KILPATRICK. This would seem to me essential to it. This is the meat of the coconut. This is the sin that the Senator is talking about. Surely it ought to be possible to try to prove no sin.

Senator ERVIN. I invite your attention to the closing paragraph of subsection (c) of section 3, where it is provided that no declaratory judgment shall issue under this subsection with respect to any petitioner for a period of 10 years after the entry of a final judgment of any court of the United States whether in or prior to or after the enactment of this act, determining that denials or abridgments of the right to vote by reason of race or color have occurred anywhere in the territory of such petitioner.

I ask you if under that provision, even in States where they have an adjudication with respect to the election officials of any subdivision, that that State cannot purge itself or cleanse itself of its sin until after the lapse of 10 years from the date of that judgment, cannot even have access to the District Court of the District of Columbia?

Mr. KILPATRICK. Precisely, sir; because it says occurred anywhere in the territory of such petitioner. This would mean under the mandatory language of the bill, which says at page 3, line 1, no declaratory judgment shall issue under this subsection—no judgment can be issued under the conditions laid down if somewhere in the State there had been one registrar who was anti-Negro, who had been prejudiced and who did one act of discrimination, denied the vote to one man, you have rooted out that registrar, fired him, dismissed him, apologized, put the discriminated voter on the register—for 10 years thereafter, you are subject to this bill.

Senator ERVIN. The Attorney General admitted before the committee that they had had such judgments in Mississippi, Louisiana, Alabama, and two cases in Georgia. That would close not only the doors of all the courthouses in that area of the country against those States and subdivisions of the States, but would even close the door of the court of the District of Columbia against them, would it not?

Mr. KILPATRICK. For 10 years; yes.

Senator ERVIN. Do you not agree with me that the court should always be open to hear anyone whether a governmental agency or an individual, present grievances?

Mr. KILPATRICK. I think even the worse convict under our enlightened jurisprudence is provided an opportunity to present his case or plea for a parole or deletion after a reasonable span of time, but here a 10-year opinion is fixed in which this stigma, together with all the consequences, is attached we have there has been one judgment affecting one political subdivision in an entire State.

Senator ERVIN. So under this provision, there would be no incentive for anyone to bring forth fruit for repentance, to use the scriptures, in this field for 10 years?

Mr. KILPATRICK. Not under this bill, but conditions are changing so rapidly in the South that this condition is going to cure itself in the

South within a span of another 10 or 15 years. This is perhaps too long a time to wait.

Senator ERVIN. Subsection (b) of section 4 provides—

A determination or certification of the Attorney General or the Director of the Census under section 3 or 4 shall be final and effective upon publication in the Federal Register.

Do you believe it is wise to provide in any law that a certification of anybody shall be final and thus bar the door to evidence to prove the invalidity of the decision?

Mr. KILPATRICK. It would seem to me to give great authority, sir.

Senator ERVIN. It would be evidence of infallibility that has never been had by any human born on this earth, would it not?

Mr. KILPATRICK. Not in quite some span of time, sir.

Senator ERVIN. I invite your attention to 5(a) which provides that when an examiner is appointed two things must be shown: First, that they have applied for registration within 90 days before the application to the examiner, and that they have been denied by some election officer, the opportunity to register to vote. And then a proviso that the requirement of that allegation may be waived by the Attorney General.

Do you believe that the Attorney General should have an unbridled discretion without any guidelines or standards to waive the requirement of law?

Mr. KILPATRICK. With the greatest deference to the occupants of that post, sir, I believe that is excessive authority to vest in the hands of the Attorney General.

Senator ERVIN. Is not the proud boast of our country that we have a government of laws and not of men?

Mr. KILPATRICK. That is the theory to which we are pledged.

Senator ERVIN. And this bill is establishing the government of man, in this particular field?

Mr. KILPATRICK. Yes, sir.

If I could make one further comment on 5(a), if you are going through the bill section by section, the applicant does not have to say under 5(a) that he has been denied the right to vote by reasons of his race or color. He could have been denied the right to vote if he was drunk when he showed up before the registrar or for any other reason. The allegations could be waived by the Attorney General. If this is to be preserved, this language should be narrowed down and shot at.

Senator ERVIN. Under the decision, a bill which omits the requirement that denial on the basis of race or color, is not legislation appropriate to the enforcement of the 15th amendment?

Mr. KILPATRICK. And hence is beyond the power of Congress to enact.

Senator ERVIN. Now, there is a provision in section 6(a) to the effect that if anyone challenges a person adjudged qualified to vote by an examiner he has to present the challenge to a hearing examiner first and in the event the challenge is not sustained by the hearing examiner, he has to take the matter to the court of appeals. I will as you if the court of appeals in our circuit does not sit for the States of Virginia, West Virginia, North Carolina, South Carolina, and Maryland?

Mr. KILPATRICK. Yes, sir.

Senator ERVIN. And it sits at great distances from where these examiners would be functioning, does it not, in many cases?

Mr. KILPATRICK. It certainly does; yes.

Senator ERVIN. That is like the old expression in Shakespeare, that is to keep the word of promise to the air and bringing it to the hope, is it not?

Mr. KILPATRICK. Yes.

While you are on page 7, I earnestly invite the committee's attention to the very broad language in section 6(b) and the authority it would give to the Civil Service Commission. It seems to be absolutely opened, the times, places, and procedures for application and listing pursuant to this act and removals from the eligibility lists shall be prescribed by regulations promulgated by the Civil Service Commission and the Commission shall, after consultation with the Attorney General, instruct examiners concerning the qualifications required for listing.

Senator ERVIN. Is that subject to the same criticism which you and I voiced a moment ago, that it gives the Civil Service Commission power to make election laws, establishing procedures for States, with no guideline whatever to control and no standard to be observed?

Mr. KILPATRICK. None that I can see, sir, and especially none that relate to the 15th amendment. These could be any times, places, procedures.

Senator ERVIN. Is that provision consistent with the principle that Congress cannot delegate its legislative authority, even if it had it in this field, without laying down guidelines that would mark the bounds in which it is to be exercised?

Mr. KILPATRICK. I think it entirely inconsistent and the authority of Congress to alter the regulations of the States over the times, place, and manners of conducting elections is limited solely to elections for the U.S. Senate and House of Representatives and in no circumstance could apply to State and local elections. You can reach State and local elections only under the 15th amendment and then only on account of abridgement or denial on account of race or color.

Senator ERVIN. I invite your attention to section 8. There is in that section a provision that State law cannot become effective until it is adjudged to be proper by the District Court of the District of Columbia: is that not an innovation?

Mr. KILPATRICK. I have never heard of a law ever having been passed like this one.

Senator ERVIN. If the writer of the Book of Ecclesiasticus had postponed the writing of that book until today, he would have to leave out the statement, "There is nothing new under the sun." Is this not something new under the sun?

Mr. KILPATRICK. It is and I would beg the committee to seriously consider this section 8. I think the point is valid. After all the shenanigans have been pulled off in certain parts of the Deep South in recent years, I think the authors of the bill were entirely justified in seeking to provide such a procedure that the possibility for further shenanigans would be greatly reduced. But here I think the bill goes so far when it applies to any law or ordinance of any State or political subdivision going to any procedures for voting, that the whole universe has pretty nearly been taken in in the affected States and that this is

far too large a burden to put upon the District Court for the District of Columbia, among other things.

Senator ERVIN. Would it not be a proper remedy for the evil that this is intended to guard against to provide for the outlawing of devices which are obviously designed to deny or abridge the right of qualified persons to vote on the basis of race or color and then providing that when the court adjudged it would come within this section, then the court apply the remedy?

Would that not be a more reasonable way to handle this?

Mr. KILPATRICK. It would seem a far more reasonable approach to the problem.

Senator ERVIN. I am going to offer an amendment to make what is sauce for the legal goose sauce for the legal gander. Do you not think it would be appropriate to amend this bill to provide that within a certain limited period after the enactment of the bill, any State or political subdivision of the State that may come within the purview of the bill shall have the right to bring a suit in the Federal courts for a declaratory judgment and provide that the act shall not become effective as to the State or political subdivision bringing such suit until the courts decide that this act is constitutional as applied here?

Mr. KILPATRICK. That would seem to me an excellent idea, to get such a declaration before too much were done under it.

Senator ERVIN. Mr. Kilpatrick, I want to commend the fine statement you have made and the suggestions you have made. Like you, I would like to see the 15th amendment implemented, but I would like to see it implemented in a manner which is in harmony with the 15th amendment, and the other sections of the Constitution. I think you have made some suggestions by which that can be done. I think you have rendered a real service to the country if we could just persuade the brethren to heed what you have to say.

Mr. KILPATRICK. I thank you, sir. I would like to say that Virginia has sent up two much abler spokesmen in Attorney General Button and former Attorney General Gray. They put me on first because I have to fly up to Philadelphia later today. But they are anxious to be heard.

Senator ERVIN. I did not know that or I would have curtailed my questions.

Senator DIRKSEN. I concur with Judge Ervin's statement. I think you have made a very temperate and restrained statement here. I think the record will indicate that you have tried to be fully objective with respect to this problem.

Mr. KILPATRICK. Thank you, sir.

Senator HART. Mr. Kilpatrick, I sympathize with your schedule problems, so I shall not delay you long. May I explain that I do not seek by my question to suggest that all lawyers are constitutional lawyers and that no nonlawyer is equipped to express an opinion on the constitutionality of legislation. I am the first to acknowledge that.

Mr. KILPATRICK. Yes.

Senator HART. But I want for the record to inquire whether you are expressing an opinion with respect to the constitutionality of the bill?

Mr. KILPATRICK. Yes, sir, I am; as Vice Chairman of the Commission on Constitutional Government, I am expressing the position that has been approved by the full Commission, on which I believe I am one

of only three who are not lawyers. It is the same position that was taken on Monday before the House by Mr. David J. Mays, a very eminent lawyer, who is the Chairman of our Commission. So I am voicing his views.

Senator HART. I think it was been useful that the Senator from Illinois has commented on the very strong expression of the constitutionality that your same Commission voiced with respect to title II of the omnibus civil rights bill last year. You were unanimously ruled wrong on that one.

Mr. KILPATRICK. Yes, sir.

Senator HART. And I think the Commission's evaluation of the constitutionality of this bill should be measured against having batted zero on the other one. That is the only reason I asked that question.

Mr. KILPATRICK. Yes, sir, I appreciate the Senator's point.

Senator HART. Now, only one other question. Do you feel that the right of a State to impose a literacy test provided it is applied fairly across the electorate is one that we should not seek to suspend or prevent?

Mr. KILPATRICK. Yes, sir, with my whole heart I believe that, in the right of the State to impose any nondiscriminatory test for the franchise of the lower house of its State legislature.

Senator HART. You used the expression "legal shenanigans" that some of the States of the Deep South practiced.

Mr. KILPATRICK. Yes.

Senator HART. How would you describe the effort that—the effort in Virginia to prevent education being made available to Negroes and then relate that to your requirement that they know how to read and write?

Mr. KILPATRICK. Does the Senator refer to Prince Edward County?

Senator HART. Among others, yes.

Mr. KILPATRICK. That would be the only county in which there has been any closing of schools that affected the Negro children, sir.

Senator HART. But as far as you are concerned, it would have been desirable to shut every one.

Mr. KILPATRICK. Oh, no, sir; I would hope the Senator would not represent—

Senator HART. Would you permit the integration of children in those counties?

Mr. KILPATRICK. Yes, sir.

Senator HART. I apologize for the assumption. I would like to explain why I made an assumption that was perhaps unfair to the witness.

The CHAIRMAN. When the schools were closed in Prince Edward County and private schools were set up, did they not offer to set up schools for the Negroes?

Mr. KILPATRICK. That is quite true, sir.

Senator HART. The reason I made the assumption is this: Reference has been made to the fact that you are an author, and included in your list of publications is "The Southern Case for School Segregation" and I read one section from it. This is your book:

The Negro is fundamentally and perhaps unalterably inferior. He is also immoral.

Mr. KILPATRICK. From what page, sir, may I inquire are you reading?

Senator HART. I am reading from the October 26, 1962, issue of Time magazine.

Mr. KILPATRICK. You will find, sir, that that is a diabolical paraphrase in the language of the Time magazine people. I never said any such a thing at any point in that book.

Senator HART. I am glad to have the record made clear.

Mr. KILPATRICK. I wrote to Time magazine at the time that came out and complained bitterly about what they said about me and received an apology from them, saying that they thought that it had been made clear from their typographical presentation, it was clear they were putting words in my mouth and they were sorry; others took it literally as you did.

No, sir, I never did say any such thing.

Senator HART. Apart from taking it literally, do I understand that you did in fact write this language?

Mr. KILPATRICK. No, sir, that was Time magazine's paraphrase of their reviewers biased review of what he thought I said. I would be glad to send the Senator a copy of my book so he may see for himself. I was commissioned by Crowell Collier to write this book as a review, just as a lawyer would be retained by a client to advocate a particular view. That is what I did. I wrote the *Southern* case.

Senator HART. This was not an expression of your contribution?

Mr. KILPATRICK. Largely, it was, sir, but in other parts, it was not and in the book I made that clear.

Senator HART. With respect to this part, was it then and if so, is it still your point of view that we are to keep the Negro in his proper place, that is to say, in separate schools?

Mr. KILPATRICK. No, sir, I have myself in the past 10 years gone a long, long way. That was a view that I would have held in May of 1954. I have since gone a long way from that.

Senator HART. When was the book written?

Mr. KILPATRICK. 1961, I believe, 1962.

Senator HART. And at that time, it was not your point of view that the Negro belonged in a separate school?

Mr. KILPATRICK. At that time, my views were going through changes; they have over this past 10-year period, sir, I am still no advocate of outright or massive integration of the schools by any manner of means. I do believe that there are all sorts of opportunities that must be opened up to Negroes, especially in the South, on a desegregated basis and I have in mind certain technical and vocational schools. My views have changed a lot and I am not certain, sir—though I want to respond in every way I can to be helpful to the committee—that this is exactly relevant to S. 1564.

Senator HART. I think it is clearly relevant to the question of the literacy test.

What was your view of the shutting of the Prince Edwards Schools?

Mr. KILPATRICK. I regretted it, from the bottom of my heart and said so.

Senator HART. Did you oppose it in editorials?

Mr. KILPATRICK. Yes, sir.

Senator HART. Good.

Mr. KILPATRICK. I begged them to open them.

Senator HART. It is not fair then, for the publications to label you as the leader of the massive resistance movement in Virginia schools against desegregation?

Mr. KILPATRICK. If you are inquiring into my personal views, my views on this thing as one individual, as a southern born, bred, and brought up have changed a great deal since 1954. I look back at the editorials I wrote in the year immediately after the Court's decision and find it hard to believe that I would have written them.

The situation in the South is not static, sir.

Senator HART. I was simply trying to find out your point of view with respect to educational opportunities for the Negro.

Mr. KILPATRICK. Every possible opportunity, sir.

Senator HART. Because if you will bear with me, perhaps then you would agree with this, that whatever else you think about the imposition of literacy tests, you would not want a literacy test imposed in Prince Edward County, would you?

Mr. KILPATRICK. Yes, sir; the Virginia literacy test is name, age, occupation.

Senator HART. Well, is my assumption wrong on this, that the public schools for a period of years have been closed in Prince Edward County?

Mr. KILPATRICK. Over a period of 4 years. They are now reopened.

Senator HART. What would you do with respect to children who have not had the opportunity for that education?

Mr. KILPATRICK. By the time those children who have recently been out of school reach the age of 21, surely they would have acquired the elementary ability to read their names and put down their name and address.

Senator HART. I raise this because it is relevant to the concern that many of us have that unless we retain the solid commitment that this bill does with respect to literacy tests, we will find that that system of education which for long years was constitutional, if in fact it was separate and equal, in truth was not equal and that what you talk about, the legal shenanigans possible will capitalize and will reward—I should not say “reward”—will permit a State or States which, over a long period of time, not as dramatically as Virginia did in Prince Edward County, but in a variety of fashions, made the attainment of comparable educational levels very difficult for Negroes as compared to whites. That, I think, is an explanation of why we feel that this automatic device is desirable and does represent a means reasonably related to the second section of the 15th amendment to effect the elimination of discrimination.

Mr. KILPATRICK. Sir, I would say only that the bad old days are very rapidly ending down below the Potomac and the educational opportunities for our Negro people grow richer and wider and better with every month and year that passes. We have gotten away from some of those old inequalities.

All the teachers are now paid on the same scale. The transportation is equal, the buildings are equal and in some cases, in many cases, the Negro schools are superior.

We have come a long way in a relatively short span of time as cons are measured. I would think for the future, this would not present

any insurmountable obstacle of any sort to the fair administration of a literacy test.

Senator HART. How many school districts in Virginia are integrated?

Mr. KILPATRICK. I can provide the Senator that information. All of them so far as I know. We have a pupil placement board and several thousand colored pupils have been placed in white schools. There is no denial of admission to a school anywhere in Virginia now because of race.

The CHAIRMAN. When you put the figures in for Virginia, will you put them in for Michigan; too, please.

Mr. KILPATRICK. I do not know where I can get them.

Senator HART. The school figures for Michigan?

The CHAIRMAN. Yes; the integrated and school figures in Michigan. They have a mayor who believes in white supremacy.

Senator HART. His name is Orville Hubbard and I know him. We happen to disagree on that and other things.

I think in fairness, Mr. Kilpatrick, I should ask for permission that there appear in the record the precise statement that you made with respect to the place the Negro should occupy in the school rather than what you now describe as a paraphrase by Time. If there is no objection, I would like the record to include that, a statement which you will furnish from the book, which is precisely your expression of views.

Mr. KILPATRICK. I would be happy to furnish such a statement, sir. There is no question of my views. They are spread out on my editorial pages 6 days a week. As you can imagine, I write very frequently in this area. I have, I hope, taken the lead in urging educational opportunities for Negroes in Virginia, not merely vocationally but higher education, also.

My newspaper, in this same general area, endorsed the confirmation of Spottswood Robinson as a U.S. judge. I endorsed the appointment of Marshall Thurgood as U.S. judge. I, myself, have asked for the appointment of a Negro to our State board of education. I have commended those many localities in Virginia in which Negroes are now serving on boards of supervisors and boards of education. I think it is through this sort of activity that Negro education will be improved. I hope there is no question of my stand in favor of this.

But I will be glad to furnish the committee any sort of statement it might want.

Senator HART. I would be glad to have the record contain, in whatever degree of fullness you would like, your point of view, because I think if it is as you describe, you have been libeled and not only been described as a prime mover in the massive resistance movement in Virginia.

(At the time this hearing went to press, the material had not been received.)

Senator HART. What are the figures on Fauquier County, incidentally. This is not that I anticipate some proof one way or the other?

Mr. KILPATRICK. I was about to retrieve these because I did not check Prince Edward County. You want the percentages of white and Negro registration?

Senator HART. Yes.

Mr. KILPATRICK. In Fauquier County, 62.7 percent of the white persons are registered, 48.2 percent of the Negro persons.

Senator KENNEDY. Could I ask on that point how those figures were ascertained?

Mr. KILPATRICK. The U.S. Bureau of the Census figures on persons over 21 for 1960, placed against the reports of the local registrars to our State board of elections on persons registered by race.

Senator KENNEDY. And it is your understanding that those are substantially accurate?

Mr. KILPATRICK. I think these figures have some flaws in them somewhere, Senator. There are a few things that show up that perhaps can be explained, such as in Cumberland County, in which the census found 1,819 white persons over 21, but 2,000 white persons registered. That could have been the consequence of having purged the registration books over a long, long period of years. Other such discrepancies turn up. But these are the best figures there are.

Senator KENNEDY. The reason I was interested is because the Civil Rights Commission figures on Fauquier County show 62.8 and 48.2. There is only a deviation of 1 point on this and I thought the degree of similarity was of some interest.

Mr. KILPATRICK. I have tried to give to this committee the best figures I could put together, regardless of whether they helped my case or not. I believe it would be the rounding off of a decimal point.

Senator Hart was good enough to ask about Prince Edward, which I swear to you I have not checked. In Prince Edward 61.1 percent of the white persons and 38 percent of the Negro are registered. I do not believe that is so awful bad for a rural, southside Virginia county, where 38 percent of the Negro population are registered.

Senator HART. I agree with you. I assume it is rather surprisingly high, assuming the attitude that must exist in a county that closes public schools.

Mr. KILPATRICK. If those 114,000 persons had gone to the polls in Virginia last November, this would not apply to Prince Edward County, because 50.6 percent of the people in Prince Edward County voted, the adults. It would be exempt under the terms of this bill.

There has been no discrimination or denial of the right to vote in Prince Edward County, but that is one of the funny ways this figure operates. This poor little county would be exempt, because 50.6 percent of its adults voted.

Senator KENNEDY. What about Mecklenburg County?

Mr. KILPATRICK. That is a southside county. This happens to be one of the six where I have a question mark beside the figures; 44.5 percent of the white persons registered, and only 9.3 percent of the Negroes.

Senator KENNEDY. What kinds of figures are you talking about there? I am talking about the number of whites that you have and the number of nonwhites.

Mr. KILPATRICK. This, in Mecklenburg County, I showed 10,444 white persons over 21, of whom 4,670 were registered, or 44.5 percent.

Senator KENNEDY. And the number of nonwhites?

Mr. KILPATRICK. 6,624, of whom only 62 were registered.

Senator KENNEDY. What about Montgomery County?

Mr. KILPATRICK. Montgomery County shows no colored registration at all. It shows 960 nonwhite persons over 21, none of whom are registered.

I would like to hope the committee would check that figure down. Montgomery County is a good Republican county right outside of Radford, around the Radford area, in the Sixth Congressional District. I have a feeling that that figure is probably wrong, sir. There are many, certainly some of the 960 nonwhite persons over 21 registered, but they just did not show up on this report.

Senator KENNEDY. I notice the figures you have quoted. They have just been completely the figures which have been ascertained from the State level and which you quote here are identical figures that the personnel of the Civil Rights Commission came up with.

Mr. KILPATRICK. That is right, sir. I am not trying to rig up any fancy figures to support my position. These are the best figures there are.

Senator ERVIN. I would like to clarify something. I shall ask you with reference to school desegregation if, beginning with the case of *Roberts* against the *City of Boston*, handed down by the Supreme Judicial Court of Massachusetts in 1849, to on May 1954, if every court, Federal or State, north, south, east, and west, which passed on the question did not hold that the 14th amendment permitted States to segregate their children on the basis of race, provided the facilities were equal?

Mr. KILPATRICK. That was the unbroken line of holdings, sir, from the *Roberts* case to the *Plessy* case, to the *Cummings* case, on down.

Senator ERVIN. And there were 65 or 70 of these cases all together, were there not?

Mr. KILPATRICK. Federal and State; yes, sir.

Senator ERVIN. And suddenly, on May 1954, the constitutional meaning was adjudged to have changed, without any change in the 14th amendment being authorized by the only agencies which can change the meaning of the Constitution, was it not?

Mr. KILPATRICK. Yes, sir; and I would say to the distinguished Senator from Michigan that that was my great fault in this matter on the constitutional question, in which I felt that the Court in effect had amended the Constitution.

Senator ERVIN. While the Court is authorized to interpret the Constitution—that is, to ascertain its meaning—the Court is not authorized to change the meaning of the Constitution, is it?

Mr. KILPATRICK. As the Court itself has many times said.

Senator ERVIN. So some of these things have not gone on quite a hundred years, some of the things we have been taken to task for?

Mr. KILPATRICK. Yes, sir.

The CHAIRMAN. Senator Tydings?

Senator TYDINGS. Mr. Kilpatrick, let me echo the sentiments of my associates who feel that your testimony has been most helpful here. I have just a few questions.

What is the theoretical justification for the poll tax for local elections, which I understand is still in effect in five southern States, including Virginia? Is that correct?

Mr. KILPATRICK. Yes, sir.

Senator TYDINGS. First of all, do you support a poll tax for local elections?

Mr. KILPATRICK. Yes, sir; though I would not say that I support it violently or with overwhelming enthusiasm. I do support it.

Senator TYDINGS. Why?

Mr. KILPATRICK. It seems to me a useful token of involvement or concern or membership, as it were, in the community. The tax is very small. It is \$1.50 a year in Virginia. This does not seem to me an excessive amount to ask of any citizen as a token of membership, his involvement in the community that he lives in.

Senator TYDINGS. Can you justify a poll tax if a person otherwise qualified under the laws and statutes of a given State is deterred from voting because of the financial position of his family, because of that poll tax? Do you still think it is justified?

Mr. KILPATRICK. In such a hypothetical circumstance, no, sir, I would say not. But it is hard for me to imagine any family in which the circumstances would be such that \$1.50 a year could not be found to pay a tax, two-thirds of which goes directly to the schools.

Senator TYDINGS. But you feel that if it could be shown that the poll tax was a definite deterrent to an otherwise qualified person to keep him from voting, there would be no justification for its continuance?

Mr. KILPATRICK. I doubt that I could be shown that but if it could be shown.

I would say this to the Senator, if I may. There is no question of the reason that the poll tax was set up in Virginia by the Constitutional Convention of 1902. It was to deter the Negro from voting, and one member after another stood up on the floor of that convention in 1902 and said that this was the purpose of the poll tax. They rigged it up with all sorts of tricky little stratagems, that it had to be paid for 3 years in arrears, and it had to be paid in advance of the election, even when there was no interest in the election. I do not agree with that at all. But you asked me about the fact as such, and yes, sir, I see nothing at all wrong with a tax of \$1.50 a year as a prerequisite for voting in an election. I do not think it deprives anyone, really, of his right to vote. I would say it is certainly no longer a deterrent in the State of Virginia for voting as far as the Negro population is concerned, because they pay their poll taxes now, or have them paid for them in droves, and turn up very actively at the polls. It is not being used discriminatorily at all.

Senator KENNEDY. Could I ask you what you mean, having them paid for them?

Mr. KILPATRICK. This is a regrettably familiar political device in certain parts of our State, and I believe in other parts of the Union, not unknown in certain parts of Boston and New York, and in college fraternities, where men have been bribed to go and vote in a certain way.

Senator KENNEDY. Paying a poll tax?

Mr. KILPATRICK. Well, it amounts to \$5.47, or some tricky figure, for your 3 years-plus interest. Yes, it is not unknown in certain elections for this poll tax to be paid for particular prospective voters in order to get them to the polls in your behalf.

Senator KENNEDY. Have you ever—this 3-year limitation is something I was interested in. Does this mean that if an individual has not paid his poll tax for a particular year, he has to pay it for the 3 past years in order to qualify?

Mr. KILPATRICK. That is right, sir. If I had registered to vote and came in now, being well beyond the minimum age of 21, and I had not paid my poll tax, I would have to pay it for the calendar years of 1962, 1963, and 1964 in order to register to vote in 1965.

Senator KENNEDY. So it is not really \$1.50, is it?

Mr. KILPATRICK. If you pay your taxes on schedule, that is all it is, \$1.50. Many thousands and thousands—indeed, more than 2 million people in Virginia do pay their taxes right on schedule.

The CHAIRMAN. In fact, it is on the tax statement, is it not?

Mr. KILPATRICK. Yes, sir; the tax is billed to you routinely and you simply include your check for \$1.50 with your check for all the other taxes.

The CHAIRMAN. This has to be paid how long in advance?

Mr. KILPATRICK. At least 6 months prior to an election. That is a constitutional provision.

Senator TYDINGS. I have a couple more questions, Mr. Chairman.

Then insofar as the poll tax is concerned, you do feel that in many cases, it is used as an encouragement for dishonest election practices, or at least it is susceptible to that use?

Mr. KILPATRICK. No more susceptible, sir, than any other device or trick anywhere in the United States of America. The absentee voting law is a far trickier device for corrupting our elections than the poll tax.

No, sir; I do not think I could go with the Senator on that.

Senator TYDINGS. You brought it up. That is the only reason I refer to it.

Senator KENNEDY. What is your basis for your knowledge of the voting patterns in other parts of the country?

Mr. KILPATRICK. I have been editor for a newspaper for 16 years and have made politics and law my lifelong study. I believe I am not wholly unacquainted, sir, with certain tactics and practices that have historically been used in other parts of the Union.

Senator KENNEDY. Historically—this is why I was interested. I certainly appreciate your understanding of the Virginia situation. But I was wondering what your background was in expressing an opinion about the understanding of election procedures in other parts of the country which you so willingly express this morning.

Mr. KILPATRICK. No more than the study of those textbooks in political science that are found not only on the shelves of college libraries, but in the newsstands of our principal cities. I have traveled widely over the United States; I have spent a good deal of time here in Washington; I have talked with a great many members of the House and Senate. This is no more background than a thousand other political writers and reporters would have, but it may be useful.

Senator TYDINGS. Mr. Kilpatrick, in your discussion of section 3(b) on page 2, and that is the section having to do with tests or devices, do you have any suggestion as to how that section could be amended or written or drafted in any way to protect the people in the South or in certain sections of the country from the tremendous ingenuity State

officials and State legislatures have to utilize "voting qualification" consistently as a device or artifice to prevent colored people from having the right to vote?

MR. KILPATRICK. I tried to suggest such an approach in my principal statement, sir. Section 3 (a) and (b) do not relate themselves directly to the denial or abridgment of the right to vote by reason of race or color.

Senator TYDINGS. I got your point in section 3(a), and I can see it clearly, because it does not specifically refer to Negroes or the imbalance or disproportion between the two. That is simply a substitute in your formula such as you have suggested in 3(a).

But to get down to 3(b)——

MR. KILPATRICK. My suggestion was that if you wanted to draft a bill that would fit under the 15th amendment, you limit its presumptive application to those areas in which, on the basis of some of these figures, there appears to be a reasonable possibility of discrimination against the Negro. That is the first thing to do. Then, in such a statistically created, presumptive county, you provide, on complaint of these 20 proposed voters that they have been discriminated against by reason of their race or color, for the appointment of a Federal registrar. The complaint would have to be proved out in some judicial proceeding of some sort. Then the registrar is appointed.

Now, I leave it to the Federal registrar to apply the qualifications, as in Virginia, the form, to anybody who comes in; his door is wide open and he applies it in a nondiscriminatory way and registers the voters in accordance with State laws.

Senator TYDINGS. In certain States, take a county or an area which, for many, many years, has not provided an equal opportunity to learn to read or write to a colored person, and you have in the law that in order to qualify a person must read or write or interpret something—you would force the Federal examiner to interpret or to actually carry out a law or a qualification which was written in, put into effect, really for the basic purpose of keeping a colored man from registering, would you not?

MR. KILPATRICK. No, sir. I would question your assumption on that all the way. I know of no Southern States, sir, in which the opportunity of learning the elementary skills of reading and writing are denied to any child.

Senator TYDINGS. This is not just reading and writing. You know what is done in certain areas.

MR. KILPATRICK. To interpret any section of the Constitution—that was just thrown out by the Supreme Court in the cases of Louisiana and Alabama.

Senator TYDINGS. Would you permit the registrar or the examiner to interpret the existing voting qualifications in a manner which he considered fair and proper?

MR. KILPATRICK. Yes, sir. I would like to see the local and State registration people sit with him so that there could be some joint action on this, and so you do not exclude the State entirely. But I keep looking at this, perhaps necessarily, in terms of our Virginia situation. I would not have the slightest objection in one of these hypothetical situations to bringing any Federal registrar in anywhere in any of the counties and giving him a stack of applications and saying, "Register anybody who comes in the door."

I do not know that illiterates ought to have some right to vote that literates do not have. This is a curious line of reasoning for me, that there is some right to vote that is enhanced by illiteracy. I do not see this.

Senator TYDINGS. Well, you do agree that a person ought to have a basic right to vote without any hindrance because of his color? There is no question about that?

Mr. KILPATRICK. Precisely; certainly.

Senator TYDINGS. If a test or a device has been consistently used and been so held in the courts, a court of law, to have been consistently used to deprive persons of the right to vote, do you still feel that that would not make any difference, that the legislature, or that the officials' use of that were perfectly in their rights?

Mr. KILPATRICK. I am right with you, sir, on any legislation you can devise that would make it impossible for any of these tests or devices to be used to deny the right to vote because of race.

Senator TYDINGS. That is what this bill is all about.

Mr. KILPATRICK. I understand that, but the bill goes so far beyond that that it eludes me under article 1 of the Constitution.

Senator TYDINGS. I have nothing further.

Senator ERVIN. I think I could suggest to the Senator from Maryland a very simple amendment to take care of the situation he has spoken of. It would be to strike out the comma in line 6 and add this: "Which is designed to deny or abridge the right of qualified citizens to vote on account of race or color. Nothing contained in this subdivision or any other provision of this act shall be construed to invalidate, suspend, or impair any literacy test which is applicable to all citizens irrespective of race or color, and which merely tests his capacity to read or write the English language.

Mr. KILPATRICK. I would go along with that.

Senator ERVIN. I do not like to get sections like this bill has, but when we had similar propositions about literacy tests, North Carolina was taken to task by my good friend the then Attorney General because such census figures disclosed that we had approximately 30,000 Negroes who had had no schooling.

I was provoked to go out and do a little investigating myself so as to extend my knowledge beyond North Carolina, and I found that there were 60,000 people in the State of Massachusetts who have had no schooling.

Mr. KILPATRICK. That is an interesting discovery.

Senator ERVIN. I imagine you have had your curiosity stimulated by some of these charges made against Virginia and these other States.

Mr. KILPATRICK. Yes; I have.

The CHAIRMAN. We shall recess until 2:30.

(Whereupon, at 12:35 p.m., the committee was in recess, to reconvene at 2:30 p.m., the same day.)

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

We have the Honorable Thomas Watkins, who represents the Governor of Mississippi, as the first witness. Mr. Watkins is one of our

outstanding attorneys in Mississippi. In fact, his father before him was one of the great lawyers of the State.

Mr. Watkins, will you come forward?

STATEMENT OF THOMAS J. WATKINS, ATTORNEY, MISSISSIPPI

Mr. WATKINS. Mr. Chairman and distinguished members of the Senate Judiciary Committee, it is a privilege and an honor to be permitted to appear before this committee. I am here at the request of the Governor of Mississippi. My purpose in being here is to defend the Constitution of the United States.

I have filed a formal statement which is rather lengthy. I do not intend to impose the statement in its entirety on this committee verbally. I would like for the statement to be filed, if it may, Mr. Chairman.

The CHAIRMAN. It will be printed in the record.

Mr. WATKINS. In displaying the constitutional rights of Mississippi and other States to use literacy tests as a qualification of the privilege of voting, Senate bill 1564 constitutes, in my opinion, an undisguised frontal attack on the Constitution as interpreted by the Supreme Court of the United States for more than 100 years. This bill flies squarely in the face of the same Constitution that every U.S. Senator has sworn to uphold.

The very first article of that Constitution guarantees to the States the right to fix the qualifications of their voters. Making this a State function was no casual decision. At the time of the adoption of our Constitution, there was wide divergence of opinion among the States as to what should be the voting qualifications in each. For instance, New Hampshire permitted only male inhabitants 21 years of age who were not paupers to vote.

The great State of Massachusetts limited the privilege of voting to male inhabitants 21 years of age and who had an estate of £60. Connecticut had a most unusual voting requirement at the time of the adoption of the Constitution. It permitted only those to vote who had "maturity in years, quiet and peaceful behavior, a civil conservation, and 40 s. freehold."

New York limited the privilege to male inhabitants possessed of a freehold of £20. Pennsylvania permitted only freeman who paid taxes to vote. Maryland limited the privilege of voting to freemen who owned property. North Carolina required a man to own 50 acres of land and to be a freeman, and South Carolina required a person to be a freeman, white, and own 50 acres of land.

Recognizing that there was no way this Union could not have been formed, in my opinion, if they had been required to agree on one set of qualifications for voters. Recognizing that, the men who formed the Union wisely left it to each State to determine what those voting qualifications in that particular State would be. That provision of the Constitution met with complete approval of the Delegates.

According to James Madison's "Journal of the Constitutional Convention," the only dissension arose when Gouverneur Morris proposed that all electors be required to be freeholders. This was rejected on the basis that the States were the best judges of the circumstances and temper of their own people.

During the Convention, the question of Federal control over qualifications of electors arose. Both George Mason and James Madison expressed the view that this would be a dangerous power in the hands of the National Legislature.

The section was unanimously approved by the Convention on August 8, 1787. During the campaign for ratification of the Constitution, this section was strongly supported in the *Federalist Papers*.

Similarly, article II, section 1, paragraph 2, concerning the mode of choosing electors for President and Vice President, is clear and concise:

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors.

There can be no doubt that the framers of the Constitution intended that the entire process of choosing electors was to remain in the hands of the States. This was clearly followed by the adoption of the 9th and 10th amendments reserving unto the States and unto the people all powers and rights not delegated to the United States by the Constitution.

A literacy test as a qualification for voting was adopted by Connecticut in 1855. That State was soon followed by Massachusetts, which adopted a literacy test in 1857.

But the proponents of this bill will say that all of this was prior to the adoption of the 15th amendment, and of which they claim the power to establish voter qualifications in some of these States. Does the 15th amendment give Congress any such power? Clearly, it does not.

The fact that the 15th amendment was not intended to take from the States the exclusive right to fix voter qualifications is shown by the passage of the 17th amendment, adopted many years later, containing the identical language originally used in section 2 of article I of the Constitution:

The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

The 15th amendment does prohibit any State from using race or color as a prerequisite for qualifying to vote. Congress has the authority to enforce that amendment by appropriate legislation. Congress can make it a criminal offense to deny the right to vote because of race or color, and Congress can fix the penalties for violation. It has done so. Congress can provide for injunctive relief for States violating this constitutional provision. It has done so. Congress can authorize suits to be filed by the United States to enforce the 15th amendment, and Congress may give jurisdiction of such actions to three-judge courts. It has done so.

But the 15th amendment did not give Congress the power to prohibit discrimination on grounds of education. This bill, in seeking to abolish literacy tests, does just that. After the 15th amendment had been passed by the House, the Senate amended it to add prohibitions against discrimination on grounds of education. This amendment was defeated in the House, and the 15th amendment ultimately passed in its present form, prohibiting only discrimination because of race or color.

In other words, those who framed the 15th amendment specifically refused to give Congress the power to do that which S. 1564 seeks, the elimination of literacy or educational requirements as qualifications for voters.

It is clear that Congress and the States intended the 15th amendment to mean exactly what it said. The color of a man can't be a reason to grant or deny him the right to vote. But all other qualifications are left entirely to the wisdom of the States. The 15th amendment does not give the vote to anyone. I does not alter in any way the provisions of article I of the Constitution, which reserved to the States the power to fix the qualifications.

In 1876, in *Reese v. United States*, the Supreme Court of the United States held that the 15th amendment does not confer the right of suffrage upon anyone. It further says that the power of Congress to legislate at all upon the subject of voting at State elections rests upon this amendment and can be exercised by providing a punishment only.

I pause to call attention to the prohibitory nature of the 15th amendment and the prohibitory nature of the power of Congress thereunder. Other cases have carried this principle of law forward. I refer to *Pope v. Williams* in 193 U.S. 621, in which the Supreme Court of the United States again said that the 15th amendment did not confer the right of suffrage on anyone and said the question whether the conditions prescribed by the State might be regarded by others as reasonable or unreasonable is not a Federal one.

The question of the literacy test first arose in *Gwinn v. United States*. One of the questions involved in that case was whether the use by a State of the literacy test conflicted with the 15th amendment. In that case, the Supreme Court held that the establishment of a literacy test was a valid exercise by a State of a lawful power vested in it and was not subject to supervision. This holding was reaffirmed in 1959 in *Lassiter v. The Northampton County Board of Education*, 380 U.S. 45, which involved a literacy test required by the State of North Carolina. In that case, the Court, in holding that a State may apply a literacy test to all voters irrespective of race or color, recognized that the State has the sole power to determine the qualifications of voters.

In its opinion in 1959, and I have heard some comments in this hearing indicating that the Supreme Court is free to and does occasionally change its mind about what the law is over a period of years—I am happy to say that the *Lassiter* case as a precedent has been reaffirmed and cited with approval no later than March 1 of this year, 1965, in the *McLaughlin* case from Florida. So I say to the gentlemen of this committee that I do not think that this authority of *Lassiter* is on quite the same grounds as *Plessy v. Ferguson*. Nor do I think it is on the same grounds as the civil rights cases of 1893, which was the authority on which many relied in thinking that the Civil Rights Act of 1964 would be declared unconstitutional.

I would like to point out that in the *Lassiter* case, the Supreme Court of the United States made certain cogent remarks. For instance, they said:

Literacy and illiteracy are neutral on race, creed, color, and sex, as reports around the world show. Literacy and intelligence are obviously not synonymous.

They also said a State might conclude that only those who are literate may exercise the franchise. Then they pointed to the first decision

in this country which upheld the validity of a literacy test. They pointed to the decision of the State of Massachusetts and said:

It was said last century in Massachusetts that a literacy test was designed to insure an "independent and intelligent" exercise of the right of suffrage.

They went on to say:

We do not sit in judgment on the wisdom of that policy. We cannot say, however, that it is not an allowable one measured by constitutional standards.

I call this committee's attention to the fact that in *Williams v. The State of Mississippi*, 170 U.S. 213, the Supreme Court upheld the literacy requirement of the Mississippi constitution. In *Trudeau v. Barnes*, 65 Fed. 2d 563, the U.S. Court of Appeals for the Fifth Circuit upheld the constitutionality of the Louisiana literacy requirement, upheld the literacy test of the Louisiana constitution, and certiorari was denied.

I respectfully submit to this committee that there is no authority to the contrary. If it is the desire of the people of this country to take from the States the right to require a certain degree of literacy in order to qualify to vote, this must be accomplished by an appropriate amendment to the Constitution. The power of the Congress in this respect is exactly the same as it is with respect to prohibiting the requirement by the States of a payment of a poll tax in Federal elections. It was correctly recognized that this could be done only by amendment of the Constitution. Accordingly, the 24th amendment to the Constitution was passed and adopted.

In my statement of what I believe to be the constitutionality of this act, I find myself in excellent company. On April 10, 1962, the Honorable Robert F. Kennedy, Attorney General of the United States, accompanied by the Honorable Burke Marshall, Assistant Attorney General, testified before a subcommittee of this committee with respect to S. 480, S. 2750, and S. 2799. The Attorney General supported only S. 2750, which did not take from the States the right to fix qualifications of voters. During that testimony, the Attorney General of the United States stated, and I am quoting now from page 269 of the official record:

This legislation does not set the qualifications of these voters. It merely sets the test, the testing of those qualifications. And, in my judgment, that is clearly constitutional.

If we were setting the qualifications for the individuals then, I believe that it would be unconstitutional and would require a constitutional amendment.

Again the Attorney General said, and I am now quoting from page 271 of the official record:

I would say that if we came in here and offered legislation that set the qualifications of the voters that it would be unconstitutional; not unconstitutional only under article I, section 4, but under the 14th and 15th amendments. I would agree with you entirely then, but we are not doing that.

Again at page 293, the Attorney General said:

For instance, I think that the Civil Rights Commission suggested and recommended that we do away with all literacy tests, at least four out of the six members did, and I would be opposed to that.

Again, at page 296, he said:

I would have grave doubts about the constitutionality of that particular piece of legislation which abolishes all literacy tests, as I understand it.

Again, concluding my quotes from the former Attorney General, at page 297, he said:

I think that a State, if it determines that it wants to use or utilize a literacy test, should certainly be permitted to do so.

It is therefore apparent that Attorney General Robert F. Kennedy, with the excellent advice of the Honorable Burke Marshall, was of the opinion that legislation which deprives the States of the right to use literacy tests as a requirement for voting would be unconstitutional and that only a constitutional amendment could make that change in our basic law.

I hesitate to point out here that the present Attorney General served under the Honorable Robert F. Kennedy and, in my recollection, was appointed by the Honorable Robert F. Kennedy and the Attorney General's office. I am astonished to find Attorney General Nicholas Katzenbach testifying directly to the contrary on March 18, 1965, before Subcommittee No. 5 of the Committee on the Judiciary of the House of Representatives. The Attorney General was also accompanied on that occasion by the Honorable Burke Marshall as adviser.

In an effort to sustain the constitutionality of the bill now before this committee, the Attorney General takes the position that Congress has the same power to legislate under the 15th amendment that it does under the commerce clause, section 8 of article I, which provides that the Congress shall have power to regulate commerce with foreign nations and among the several States, and with the Indian tribes.

The Attorney General makes no distinction between the unlimited affirmative right of Congress to legislate in the field of commerce and its very limited right to prohibit the States and the Federal Government from discriminating in the field of voting because of race or color under the 15th amendment. The Attorney General relies on *Gibbons v. Ogden*, 9 Wheat 1, and its description of the power of Congress to regulate interstate commerce.

The 15th amendment, like the 14th amendment, merely prohibits a State from discriminating. In *Ownbey v. Morgan*, 35 L. Ed. 837, 356 U.S. 94, the Court said:

Its function is negative, not affirmative, and it carries no mandate for particular measures of reform.

The Attorney General states that the bill will deny the use of "onerous, vague, unfair tests and devices enacted for the purpose of disenfranchising Negroes." The bill, however, does not use this language. This bill prohibits the use of any literacy tests. If the bill prohibited onerous, vague, and unfair tests which tend to disenfranchise Negroes, it would come very much closer to the power granted Congress by the 15th amendment of the Constitution.

The Attorney General states:

It is only after long experience with lesser means and a discouraging record of obstruction and delay that we resort to more far-reaching solutions.

Noting that the description of this bill as "far-reaching" is an understatement, I respectfully remind the committee that the bill was offered only 8 months after passage of title I of the Civil Rights Act of 1964, which granted broad new powers for the endorsement of the 15th amendment. This, I submit respectfully, is much too short a

time within which to determine whether this recently passed legislation is adequate.

I would now like to direct the committee's attention to what I believe to be other fatal constitutional defects in the bill now before the committee. I refer first to the fact that it adopts a classification of States to which the bill shall be applicable, which is not a rational classification but is discriminatory, unrealistic, arbitrary, and unreasonable. This act does not apply to all the States, but is applicable only to a special class of States or political subdivisions. This classification violates the fifth amendment to the Constitution. The prohibition against denial of due process of law is, under this amendment, applicable to the United States. *Bolling v. Sharpe*, 98 L. Ed. 884.

The members of the class under this bill are determined by the Attorney General, based on findings of the Director of the Census, first, that less than 50 percent of the persons of voting age residing therein were registered on November 1, 1964; or, two, that less than 50 percent of such persons voted in the presidential election of November 1964. This classification is unrealistic, arbitrary, and unreasonable. It does not pretend to prevent discriminatory use of tests except in approximately six States. Other States can have and use the tests as much as they please and yet not be within the class. One State having only 49 percent of the persons of voting age residing therein registered on November 1, 1964, would come within the act, while another State having only 50.1 percent of the persons of voting age residing therein registered would not come within that act, regardless of the discrimination in that State.

The evils sought to be avoided is the discriminatory use of tests, and whether or not 50 percent of the residents were registered is not by any theory determinative of the discriminatory use of tests. It could be, and I think probably is in those States which would not meet the 50 percent requirement of this act, could be due to apathy or a failure on the part of residents to attempt to register. Registration is not required and cannot be required.

In other words, the basis for the classification is a conclusive legislative presumption that where 50 percent of the residents of a State or political subdivision did not vote in the presidential election of 1964, there had been a discriminatory use of tests for voter qualifications, while this was not true if only 51 percent of the residents voted in that election.

I might pause here to call the committee's attention to *Butler v. Thompson*, affirmed 241 U.S. 937, which held that the fact that there was a 15 percent difference in the assessments for poll taxes as between whites and Negroes in the State of Virginia could not be used as a basis for a finding of discrimination among the races in that State.

Senator ERVIN. What case was that?

Mr. WATKINS. That is *Butler v. Thompson*. It is 97 Fed. Supp. 17. It is a three-judge court case, and it was affirmed by the Supreme Court of the United States in 241 U.S. 937.

Senator ERVIN. If you do not mind an interruption at this point on this, I would like to point out that the 15th amendment does not prohibit a State from denying persons the right to vote. It is directed to denying citizens the right to vote, is it not?

Senator ERVIN. This line 11 on page 2 in section 3(a) uses the word "persons" and not "citizens."

Mr. WATKINS. That is right, sir.

Senator ERVIN. And furthermore, the trigger of the bill is that the Director of the Census must determine that less than 50 percent of the persons of voting age residing therein were registered on November 1, 1964.

Now, anybody residing in the State at that time would be counted in determining whether this trigger went into effect, whether they had been there 1 day or 1 week, or whether they had been there long enough to acquire the status that would entitle them to register?

Mr. WATKINS. Exactly, Senator. The presumption created by this bill is conclusive in that no section of the act authorizes a contract thereof. The only right of any State to contest is the right to attempt to be removed from the class, as provided by section 3(c). Under the impossible condition that the State has the burden of proving that no person acting under color of law has engaged during such periods, and it is a 10-year period, in any act or practice denying or abridging the right to vote for reasons of race or color. No State or political subdivision anywhere—north, east, south, or west—could make such proof that no person within the bounds of that State had denied anybody the right to vote because of race or color.

Moreover, the class is a closed class. It permanently excludes all other States or political subdivisions from ever coming within the act, regardless of later discriminations, the determinative period being November 1, 1964. States not within the act on that date may proceed to use tests and devices for voter qualifications at will and discriminate in the application thereof at will without coming within the class. The fact that less than 50 percent of the voters were registered in 1963 or 1965 is immaterial. Nor can any State or political subdivision in the class as of that date be removed from the class even if thereafter, more than 50 percent of the residents register or vote in presidential elections.

The Supreme Court of the United States has very recently condemned this type of classification in *McLaughlin v. Florida*, 13 L. Ed. 222. I want to quote one thing:

Classification "must always rest upon some difference which bears a reasonable and just relation to the act in respect to which classification is proposed, and can never be made arbitrarily and without any such basis * * * arbitrary selection can never be justified by calling a classification."

In *Heiner v. Donnan*, 285 U.S. 312, the Court held that a classification could not be based upon conclusive presumption.

The above case was approved on March 1, 1965, by the Supreme Court of the United States in *Carrington v. Rash*, 13 L. Ed. 675.

I would like now to turn my attention to section 4(a) of the act very briefly. It provides for the commencement of the examiner procedure at the will of the Attorney General under either of two separate circumstances: 1. That he has received complaints in writing from 20 or more residents of a political subdivision coming under section 3(a) alleging that they had been denied the right to vote by reason of race or color. There is no requirement that these be affidavits or sworn statements. The Attorney General is given absolute discretion as to whether he believes such complaints to be meritorious.

No right is given the State to challenge these statements or to be heard thereon, and the affected State is, therefore, denied any right to a hearing as to whether or not the examiner procedure should go into effect in that area or unit.

Second, the Attorney General is granted the arbitrary right to institute examiner procedure if, in his judgment, it is necessary to enforce the guaranties of the 15th amendment. No right to a hearing is granted to the State.

I turn to section 5(a) of the act. Rights of the State with reference to registration of electors are taken from the State. The Federal examiners are given the full right to examine applicants concerning their qualification for voting. Arbitrary power is given the Commission. The section provides that the application shall be in "such form as the Commission may require." The only requirement is that it contain an allegation that the applicant is not registered to vote.

The requirement that within 90 days preceding his application he has been denied the opportunity to register is placed in the section, but it is provided that this provision "may be waived by the Attorney General." The Attorney General may thus, at his whim or fancy, write out any requirement of exhaustion of remedies by the applicant. There is no positive requirement that the applicant meet the Mississippi age, residence, sanity, or absence of criminal qualifications to vote. The only requirement is:

Any person whom the examiner finds to have the qualifications prescribed by State law in accordance with instructions received under 6(b) shall promptly be placed on a list of eligible voters.

Senator ERVIN. Section 6(b) delegates to the Civil Service Commission the power to prescribe regulations.

Mr. WATKINS. Right.

Senator ERVIN. They are given the power in that that in effect nullifies or changes State law.

Mr. WATKINS. They can nullify it completely, Senator. Section 6(b) is merely that the Civil Service Commission

shall, after consultation with the Attorney General, instruct the examiner concerning the qualifications required for listing.

Thus, the Commission could ignore entirely the requirements of State law or determine under the advice of the Attorney General which one should be honored and which one ignored.

Section 6(a) purports to give election officials an opportunity to challenge the list of eligible voters prepared by the examiner. The list is required to be transmitted to the appropriate election officials at the end of each month, and yet a challenge must be made within 10 days after the challenged listing is made.

Let me stop here and give you an example. Suppose a man is listed on April 10. The list would be turned over to election officials on April 30, the end of the month. But the date for the challenge of that listing will have expired on April 20, or 10 days after he was listed. So the election officials would not even know the listing in many instances before the time for the challenge had completely expired.

Presumably, it was intended to be 10 days after the list was transmitted, but the act does not so provide. No opportunity of any

representatives of any election official to be present at the hearing of the applicant is granted.

No requirement is made that the records of the examination of the applicant be preserved or be in writing or be available to election officials. All that the election officials would have would be a bare list of eligible voters, and an investigation thereof within 10 days would be impossible. The election officials would have no knowledge of any facts which would make the applicant a qualified elector or which would keep him from being a qualified elector. The challenge must be accompanied by the affidavit of at least two persons having personal knowledge of the facts constituting grounds for the challenge. The burden of proof of lack of qualifications for registration is on the election officials. The finding of the hearing officer on such a challenge cannot be overturned "unless clearly erroneous." The practical effect of section 6(a) is to deny the State or political subdivision any right whatsoever to challenge the list fixed by the election officials.

Section 8, page 8, arbitrarily takes from the State all legislative functions with regard to voter qualifications. It provides that no future law or ordinance can be enacted imposing qualifications for voting, or rather that it cannot be enforced, if passed, until the State of Mississippi has brought an action for declaratory judgment against the United States in the District Court for the District of Columbia and secured an adjudication, with the accompanying burden of proof, that "such qualifications or procedures will not have the effect of denying or abridging rights guaranteed by the 15th amendment." This prohibition is against any new enactment regardless of its validity or its constitutionality.

The mere possibility of future improper administration of a statute is no ground for forbidding the legislation valid on its face and valid if properly administered.

By section 9(a), page 8, severe criminal penalties are imposed. Subparagraph (e) goes so far as to permit the holding up of the election of any official until final hearing, and therefore, for an indefinite time, whenever a single person—one person—"alleges to an examiner that he has not been permitted to vote or that his vote was not counted."

Now, he does not have to allege, Senators, that he has been denied that right because of race or color. He does not have to make that a sworn statement. One man can go to one examiner in the State of Mississippi and, regardless of the reason why he may not have been permitted to vote, and regardless of the truth of his statement, can hold up the entire election procedures of our State until the matter can be adjudicated through the courts as to whether that one individual was properly or improperly denied the right to vote.

Senator ERVIN. Mr. Watkins, as I construe that provision, they do not even allow you to disprove the preliminary hearing.

Mr. WATKINS. No, sir, the injunction is to issue—

Senator ERVIN. The court that hears the application for the preliminary injunction is put under an obligation to obey. It says it shall.

Mr. WATKINS. Right, Senator. And the State is not only given no notice of the institution of a suit, but the State has no right to be

heard, has no opportunity to be heard, and a preliminary injunction is ordered issued immediately without notice and without hearing.

Every man on this committee, I believe, is an attorney. I do not believe there is a lawyer within the sound of my voice who would agree with me that that constitutes due process of law, regardless of whether we are talking about the good or the wicked.

I sat here a little bit uncomfortably this morning as I heard the word "wicked" thrown around, thinking that some of the people who used it may have had the people of my State in mind. I assure the people of this committee that we are not in that category; we do not intend to be in that category, and I agree it is going to be corrected. I do not say we are lily white. I do not say we are without sin. But I do say we are still one of the States in this Union and we are entitled to due process, and this bill does not grant us due process.

Senator ERVIN. In other words, on page 10, lines 1 to 6 of the bill, it says that upon the complaint of one or more persons, the U.S. attorney may forthwith apply to the district court for an order enjoining certification of the results of the election, and the court—if the district attorney makes that application and the court shall issue such an order pending a hearing to determine whether such allegations are well founded. In other words, they put the judge under the control of the district attorney.

Mr. WATKINS. The court has no discretion but to issue an injunction and hold up the election processes indefinitely until this issue is settled.

Section 11(b) of the act provides that the only court having jurisdiction over the subject matter of the act is the District Court of the District of Columbia, which happens to be a thousand miles from some of the States which are included in the class.

There is no doubt but that the provisions of this act violate the constitutional guarantees of the right to justice and remedies for injuries. The U.S. Constitution, through the due process clause of the fifth amendment, guarantees open courts, and a remedy for injuries and prompt justice is guaranteed. While judicial remedies can be suspended, they can only be suspended in an emergency and for a reasonable time. Such guarantees are derived from the Magna Carta and are self-executing and mandatory. Due process of law not only requires open courts and prompt justice, but requires a hearing which is a hearing in fact and not merely in name.

Here the State of Mississippi has been condemned by legislative classification without an opportunity to be heard before its rights and privileges as a State are withdrawn. If it is to question the classification, it must do so as a plaintiff with the burden of proof imposed on a plaintiff and must sustain an impossible burden of proof and must wait for 10 years to do so. If it is to enact any new law, it must sustain the burden of proof of innocence, not merely deny guilt.

At this point, I think it is important to direct the committee's attention to *Garfield v. United States*, 211 U.S. 219, in which the Supreme Court said:

The right to be heard before property is taken or rights or privileges withdrawn which have been previously legally awarded is of the essence of due process of law.

To the same effect is *Bailey v. Alabama*, 219 U.S. 219, and in *Postal Telegraph v. Newport*, 247 U.S. 464, it held that the opportunity to be heard is an essential requisite of due process of law.

In *Brinkerhoff-Faris Trust and Savings Company v. Hill*, 281 U.S. 678, it held that it must be a real opportunity to be heard, not a sham.

This bill is in reality a bill of attainder directed at the entire citizenry of the State of Mississippi as a class and depriving them of political rights or suspending their political rights to control State elections.

In *Comings v. Missouri*, 71 U.S. 277, the Court defined a bill of attainder, and if you listen to a short quotation from that definition, I think you can see the parallel:

A bill of attainder is a legislative act which inflicts punishment without a judicial trial * * * these bills * * * may be directed against (individuals or) a whole class * * *

"Bills of this sort" says Mr. Justice Story "have been most usually passed * * * in times of political excitements * * *" punishment * * * embraces deprivation or suspension of political or civil rights * * *. Any derivation or suspension of * * * rights for past conduct is punishment * * *. These bills may inflict punishment absolutely * * * conditionally * * *. To make the enjoyment of a right dependent upon an impossible condition is equivalent to an absolute denial of the right under any conditions, and such denial, enforced for a past act, is * * * punishment imposed for that act.

In (cases of bill of attainder) the legislative body in addition to its legitimate function, exercises the powers and office of judge * * *. It pronounces upon the guilt of the party, without any of the forms of safeguards of trial; it determines the sufficiency of the proof produced * * *. It fixes the degree of punishment in accordance with its own notions of the enormity of the offense.

(Whether) the clauses * * * declare * * * give (or) * * * assume it * * * the legal result (is) the same, for what cannot be done directly cannot be done indirectly. The Constitution deals with substance, not shadows * * * It (the constitutional prohibition) intended that the rights of the citizens should be secure against deprivation for past conduct by legislative enactment, under any form, however disguised.

In *Ex parte Garland*, 71 U.S. 333, 18 L. Ed. 366, the Court struck down an act of Congress as a bill of attainder prohibited by the Federal Constitution.

I would now like to submit respectfully to this committee that S. 1564 in denying to a few States rights which will be continued to be enjoyed by the other States of the Union, is invalid for that reason. The proposed legislation would deprive Mississippi and a few of her sister States of the right to fix qualifications of voters. It takes from those few States the right to legislate in this field.

The remaining States of the Union are left free to exercise their full constitutional rights in this field. Thus, the act attempts to place Mississippi and a few other States in a straitjacket so far as their election laws are concerned. In so doing the act is invalid. There is no such thing as a second-class State in this Union. Every State in this Union is equal to every other State and is guaranteed the rights and privileges enjoyed by every other State. In *Coyle v. Smith*, 221 U.S. 559, 55 L. Ed. 853, the Supreme Court said:

"This Union" was and is a Union of States, equal in power, dignity, and authority, each competent to exert that residuum of sovereignty not delegated to the United States by the Constitution itself.

* * * there is to be found no sanction for the contention that any State may be deprived of any of the power constitutionally possessed by other States, as States, * * *.

To this we may add that the constitutional equality of the States is essential to the harmonious operation of the scheme upon which the Republic was organized. When that equality disappears we may remain a free people, but the Union will not be the Union of the Constitution.

I think that the Court, when it used that language, was talking directly to this Congress and to this committee of this Congress.

On that point, I refer again to the case of *Butler v. Thompson* from Virginia, which I mentioned earlier. I want to quote briefly from that case. In that case, an act of Congress had said that Virginia cannot strengthen its election laws after its readmission to the Union after the Civil War. Many, many years later, Virginia increased its poll tax requirements from 2 to 3 years. The act was attacked on the grounds that Virginia had no right to do anything to strengthen its election laws in view of this 1870 act of Congress. The Court said the act of Congress had no application, so therefore, it was not called upon to discuss its constitutionality. But it said:

If the act made that attempt, the act would be invalid. All States, after their admission into the Federal Union, stand upon equal footing and the constitutional duty of guaranteeing each State a republican form of government gives Congress no power in admitting a State to impose restriction which would operate to deprive that State of equality with other States.

Senator ERVIN. That is precisely what this bill undertakes to do with respect to the States of Mississippi, Louisiana, Alabama, South Carolina, Georgia, Virginia, and 34 North Carolina counties; is it not?

Mr. WATKINS. Right, sir; exactly. They might as well be, Senator Ervin, out of the Union as far as the right to determine the electoral processes and the laws of their respective States. They might as well be a foreign country.

I want briefly to call this committee's attention to the fact that Senate bill 1564 violates the constitutional requirement that trial of all crimes shall be by jury, and that such trial shall be held in the State where the said crimes have been committed. S. 1564 completely ignores the fact that clause 3 of section 2 of article III provides:

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said Crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

The bill also ignores the sixth amendment to the Constitution, which provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed.

Now, section 9 of this bill provides severe criminal penalties which include a \$5,000 fine or 5 years' imprisonment or both. Section 8 of the act provides for the filing of actions thereunder in the U.S. district court for the District of Columbia, and further provides:

All actions hereunder shall be heard by a three-judge court, and there shall be a right of direct appeal to the Supreme Court.

Now, the composition of and procedure before a three-judge court is established by section 2284 of title 28, United States Code. This Federal statute does not authorize or permit the right of trial by

jury before a three-judge court. Therefore, the provisions of this act, and specifically section 8 thereof, requiring all actions hereunder "to be heard by a three-judge court," automatically deprives a person charged with a criminal offense under this act of a trial by jury as guaranteed by the Constitution of the United States. The act is clearly unconstitutional in this respect.

In conclusion, I would like to say that the reason for the bill is perfectly obvious and known to all. Civil rights organizations began well-organized demonstrations in Selma, Ala. They were continued day after day and week after week until the inevitable act of violence occurred. Television cameras were present to publicize this event before the entire Nation. The leader of the demonstrations immediately went to Washington and was afforded an interview by the President and the Vice President of the United States. Under highly emotional circumstances, the President presented this bill to a joint session of Congress, calling for its immediate passage. Enveloped by this mass hysteria, the Senate of the United States orders this committee to report a bill fraught with constitutional defects back to the Senate by April 9, 1965.

I respectfully submit that this is not the atmosphere or the manner in which serious constitutional questions should be resolved. Instant legislative action, in an effort to cure what is believed to be an existing wrong, can only do irreparable damage to the constitutional rights of the people of this great country.

Senator John F. Kennedy, in "Profiles in Courage," described Senator George Norris' opposition to the armed ship bill by saying:

He was fearful of the bill's broad grant of authority, and he was resentful of the manner in which it was being steamrolled through the Congress. It is not now important whether Norris was right or wrong. What is now important is the courage he displayed in support of his convictions.

The same author also quotes Senator Norris as follows:

I have no desire to hold public office if I am expected blindly to follow in my official actions the dictation of a newspaper combination * * * or be a rubber-stamp even for the President of the United States.

I hope and pray that the wisdom of that outstanding liberal Senator is embodied in the breast of a sufficient number of the present Members of this august body to grant right and reason an opportunity to be heard.

The present emotionalism does not justify taking constitutional shortcuts. A desirable goal does not justify an unconstitutional means. If the accomplishments of this bill are desirable, let them be forthcoming in the only legal way—by constitutional amendment. The first President of our country, mindful of the disposition of men to shake off the restraining bonds of the Constitution when the situation seemed to demand it or make it politically expedient, said in his Farewell Address:

If, in the opinion of the people, the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this is one instance may be the instrument for good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance, in permanent evil, any particular or transient benefit which the use can at any time yield.

I want sincerely to say that I appreciate very much the courtesies extended to me by the chairman and members of this committee.

The CHAIRMAN. Senator Ervin?

Senator ERVIN. Mr. Watkins, section 3(c) and section 11(a) provide in substance that no State and no political subdivision of the State which falls within the purview of this bill shall be permitted to seek relief of any kind from any outrage of the bill, no matter how great, except in the three-judge district court of the District of Columbia?

Mr. WATKINS. Yes, sir.

Senator ERVIN. Other sections of the bill give the United States free access to all Federal courts having jurisdiction.

Do you think that justice can be received by provisions which give one side of a possible controversy access to all courts and compel the other side to travel as much as 1,000 miles to get to a court?

Mr. WATKINS. I think it is most unfair, Senator, and I think it is discrimination on the face of it.

Senator ERVIN. While this language is strong, does that not make a mockery of the judicial process?

Mr. WATKINS. I am inclined to think it tends to.

Senator ERVIN. If you have any hesitancy in using the word, I do not mind.

This section 3(a) apparently does not exactly put it in those words. It does not say it is a presumption or assumption or inference or what. But apparently section 3(a) which sets up the so-called triggering process, is designed to raise a presumption or an assumption——

Mr. WATKINS. A conclusive presumption, Senator.

Senator ERVIN. That the State or political subdivision covered by this bill is violating the provisions of the 15th amendment?

Mr. WATKINS. That is right, sir, and the presumption is found and concluded without giving the State any right to challenge the facts upon which it is based.

Senator ERVIN. That is what I was going to come to. Section 3(c) provides in effect that the State cannot rebut any presumption raised against it.

Mr. WATKINS. Right, sir.

Senator ERVIN. The only way it can remove itself from the bondage of this bill is to show that no time in the past 10 years has any single election official within its borders violated the 15th amendment with respect to any single individual; is it not?

Mr. WATKINS. Right, sir.

Senator ERVIN. Yet this bill professes to be a bill to enforce the provisions of the 15th amendment.

Mr. WATKINS. Yes, sir.

Senator ERVIN. And a State or county brought in under this peculiar device—I call it a device—is denied the right to prove that it is not guilty of the offense it is charged with.

Mr. WATKINS. That is right, it does that. And it would prevent Mississippi for 10 years from even claiming the right to come out from under its restrictions.

Senator ERVIN. It would close the doors of every court except the district court in the District of Columbia against the State of Mississippi, the States of Alabama, Georgia, and so on?

Mr. WATKINS. Yes, sir.

The CHAIRMAN. How would they meet the burden of proof?

Mr. WATKINS. Once you are allowed to file the suit, when there has been a 10-year lapse, you would have to prove that no person within a State had denied any other person within the State the right to register or vote because of race or color.

The CHAIRMAN. How could that be proved?

Mr. WATKINS. It is an absolute impossibility, Senator. No State in the Union, I do not care how pure and white they are or think they are, can go into court and make that proof.

The CHAIRMAN. Because it involves the sovereignty of the States, does it not?

Mr. WATKINS. Right.

Senator ERVIN. My friends advocating this bill complain about making people second-class citizens. This bill makes second-class States and subdivisions of States, does it not?

Mr. WATKINS. Very definitely.

Senator ERVIN. And it makes third-class litigants, does it not?

Mr. WATKINS. Yes, sir. This takes my State and certain other States out of the Union as far as certain serious constitutional rights are concerned. Even though there was at least the implication, I think, from this committee this morning that the U.S. Supreme Court has changed its mind sufficiently that this committee can rely on its changing its mind on this constitutional question here, I do not believe that. I have strong enough faith in the intellectual honesty of the members of that Court, but I do not believe they would for 1 minute permit this unconstitutional act to be upheld. They will strike it down just like the Supreme Court did those vicious acts that were passed following the Civil War.

Senator ERVIN. I shall have to state that it does grieve me sorely to see some of my brethren who advocate this bill manifest such little confidence in the judicial stability of the Supreme Court. I am glad to say that I have more faith in it than that.

Mr. WATKINS. I have much more, and I do not believe it is a fact, sir.

Senator ERVIN. If the Supreme Court were to uphold this bill, it would have to repudiate every decision ever made upon the rights of the States to prescribe qualifications of the voters from the beginning of this Republic down through the decision in 1959 in the *Lassiter* case, would it not?

Mr. WATKINS. As we affirmed on March 1 of this year; yes, sir.

Senator ERVIN. The bill is based upon the theory that the Supreme Court is going to throw upon the scrap heap every decision that was ever handed down on this subject and is to take and place a construction upon the words of the second section of the first article of the Constitution and the 17th amendment which those words do not permit to be made; does it not?

Mr. WATKINS. Right, sir.

Senator ERVIN. I want to commend you on the excellence of your statement here, and especially your pointing out the *Coyte* case, in which the Court held that the States stand in this Union upon an equality, and you cannot deprive one State of its powers under the Constitution and allow the other States to retain theirs. That is precisely what this bill undertakes to do.

That is all.

The CHAIRMAN. Senator Hart?

Senator HART. Mr. Watkins, thank you for a temperate and a lawyer-like presentation.

Mr. WATKINS. Thank you, sir.

Senator HART. It is not wholly relevant to any section of the bill, but would you explain to those of us on the committee who wonder at it, the, to us, extraordinarily low registration figures of Mississippi, what it is all about, how come? Why only 6 or 8 percent of the eligible Negroes are registered?

Mr. WATKINS. May I ask the Senator from where he gets the figure, 6 or 8 percent?

Senator HART. If you dispute them, I shall be glad to—I do not mean that, no. I shall tell you where, but we think and would welcome information from you to make more accurate, we think these are the most accurate figures that are available.

In the case of Mississippi, the figures that I refer to now, which I shall put in the record so that you can, if you would like to, correct the record to clarify these figures when you get back if you have a chance—

The CHAIRMAN. Where are they from?

Senator HART. Let me get them in so he can correct them if he would feel more comfortable.

We have here from the Information Center of the U.S. Commission on Civil Rights, dated March 19, 1965, a number of tables which give the registration figures by State and county in several States, and a number of counties. In the instance of Mississippi, the figures show that there is a white voting age population of 748,266, of whom 525,000 are registered, a percentage of 70.2. There is a nonwhite population of 422,256, of whom 28,500 are registered, a percentage of 6.7.

Now, let me make clear that these are not official figures from the State of Mississippi.

The CHAIRMAN. What did the Attorney General of the United States say about these figures? If I remember correctly—

Senator HART. He said they were the best available, but the Commission itself said that some were projections.

Mr. WATKINS. Yes, but—

The CHAIRMAN. Wait a minute. I want the record to show this. If I remember correctly, the Attorney General of the United States testified that the figures of the Civil Rights Commission were unreliable and he would not act upon them. That is the testimony before this committee.

Am I right, Senator Ervin?

Senator ERVIN. That is substantially my recollection.

Senator HART. If you put in the word "substantially," we would all agree that there was a comment made by the Attorney General.

The CHAIRMAN. It was his testimony.

Senator HART. We are not trying to crucify anybody falsely. We would like your figures.

Mr. WATKINS. I know that, Senator. But the reason I questioned the source of your figures, I do not think the Civil Rights Commission nor anybody in Mississippi—I do not think there are figures from which any man can say the number of qualified registered Negroes

there are in Mississippi, for a very simple reason. The race of a registrant cannot be shown on the registration books in Mississippi.

Senator, we do not show the race of a registrant. It is contrary to law for the race of a registrant to be shown.

The CHAIRMAN. Was that a U.S. Supreme Court order?

Mr. WATKINS. A district court in Georgia, in the case of *United States v. Raines*, in 189 Fed. Sup. 121, held that it was contrary to law to show the race of a registrant.

Now, that has been statutory law in Mississippi, at least as far back as 1960.

So do not misunderstand me, Senator. I am not dodging the question that I know the registration of our colored citizens is low in Mississippi. I know it is low. What I am saying is that I do not think the Commission or anybody else can say it is 6.1 percent. I do not think anybody knows exactly what it is.

Senator HART. Is it about that?

Mr. WATKINS. No, sir; I would take issue with that. For instance—

Senator HART. Well, define it to be about 10 percent one way or the other.

The CHAIRMAN. Let him finish his answer.

Mr. WATKINS. In my county, Hinds County, Jackson, Miss., there are many, many wards which we know the votes in those wards are colored votes, or practically all colored votes, because they are located in areas where only colored people live. Now, those wards turn in enough vote to indicate to me that approximately a fifth of the voters in our county are colored voters.

Now, that would be 20 percent rather than 6 percent. I cannot say that is accurate. I do not offer it as anything but the barest of estimates.

Senator HART. I think this tends, though, to show that you can give us an answer that is reliable within an average range, because the county of which you speak is shown to have, by the Civil Rights Commission figures, 15.5 percent of its Negroes registered, and you estimated 20. So I ask you now with respect to the State, how about that 6.5 percent? Is it about the same?

Mr. WATKINS. Senator, I could neither admit nor deny. I think it is low. I think there are more of our colored people voting than that. I cannot sit here and tell you it is wrong. What I am saying is I do not think anybody knows.

You cannot know, with 5 years of registration where records do not indicate whether a registrant is white or colored.

The CHAIRMAN. The Attorney General of the United States testified that checks had been made. He certainly took issue with those figures of the Civil Rights Commission, not only those figures but all the figures of the Civil Rights Commission, said that they were unreliable and he would not act upon them.

Senator HART. The record will reflect what the Attorney General stated.

The CHAIRMAN. That is right, but that is what he said.

Senator HART. Our chairman, I am sure, would help the committee if he would give us his estimate of the percentage of Negroes registered in Mississippi.

The CHAIRMAN. Frankly, I do not know.

Senator HART. Even in your home county?

Well, if we had better figures, every one of us on this committee would welcome them.

Mr. WATKINS. I realize that.

Senator HART. The best figures I know now show that 6.7 percent, was it, of a Negro population of an age eligible to be registered are registered in Mississippi as against 70.2 white. I commend the percentage of the white registration, because it is higher than many other States. But I would suspect that the 6.7 is lower than any State in the Union.

Mr. WATKINS. I would not know, sir.

The CHAIRMAN. The Senator asked me a question about my county. I live in a county that is 70 miles long. The area of the county where I live has a big Negro vote. How many I could not estimate.

Senator HART. Is that Sunflower County?

The CHAIRMAN. That is correct, but I cannot pass on some 50 precincts, 60 miles from my home. Frankly, I do not know.

Senator HART. Well, then, the report prepared by the Civil Rights Commission showed that in that county, 80.6 percent of the whites are registered and 1.4 nonwhites.

The CHAIRMAN. I saw a projection made by a State Senator that showed 50 percent of the whites in that county were registered, 50 percent above 21 years of age. He made an analysis of the county. It was our State Senator. He showed the colored population, there was a big Negro vote there. How much it is, I do not know. It all goes back that there is something to what the Attorney General said, that the figures of the Civil Rights Commission are not trustworthy and, as Attorney General of the United States, he cannot act on those figures.

Senator ERVIN. I hate to tell you this, but you take the word back down to Mississippi to register a lot of people and it is not going to do any good. North Carolina has 76 percent of its people registered. There are 13 States that I have been able to get a record on which have less registration than North Carolina and the act does not apply to them. One of the States is Michigan. North Carolina has 76 percent of its adult population registered. Michigan has only 72 percent.

Senator HART. That is why I was so careful to commend you.

The CHAIRMAN. I would like to comment again on my friend's figures that they were furnished to the Civil Rights Commission by the Southern Regional Council. What they know about it, I do not know, except I know that they are an arm of the old Southern Conference of Human Welfare, which has been cited as to what kind of an organization it is.

Mr. WATKINS. Senator, your question was intended to ask me was not our registration of colored people low. It is low. I know that.

Senator HART. I am not asking you to make an assumption or accept an assumption. But let us assume that the percentage of Negroes registered in Mississippi is 6-10 percent. These figures show 6.7. Assume that. What is the reason? Why, over these years, has this developed?

Mr. WATKINS. Senator, you would have to, I believe, spend some time in Mississippi to realize this, but that is 90 percent apathy. I am not saying there have not been instances of discrimination. I know that there have been. I know that there are some counties that have discriminated far more than they should have in Mississippi.

But take the State's 82 counties up one side and down the other. It is apathy pure and simple. I know, because in my county, there has never been any difficulty with a Negro registering when he wanted to. Yet we have never had anything comparable to the white registration.

I think it is the same thing that Attorney General Katzenbach said, explaining the low registration in the District of Columbia. I think it is apathy.

You cannot make a man register. It is not against the law not to register. Some people with some might, good intentions came to my State and stayed practically a year, their purpose being to help get the Negroes registered. I think they did get quite a few of them registered.

But those people, with the best of intentions, had an awfully hard time drumming up a crowd, if you will pardon the expression. They had an awfully hard time getting people. They were not interested in going to the courthouse and registering. That was way down on their list of problems as far as they were concerned.

Senator HART. Is it possible that the apathy was caused in part, at least, by what I understand to be a fact, that some of their Negro colleagues who were graduates of colleges, had not been able to pass the literacy test?

Mr. WATKINS. I am sure that in counties where that has happened, that did discourage others from going. But what I am saying to you, Senator, is this: that in counties where I know that did not occur and that that has not been a deterrent, still you did not have any large percentage of your Negroes going. So I do not think that accounts for the actions through Mississippi of a surge of colored citizens going and asking to be registered to vote.

Senator KENNEDY. May I ask you why you feel that the Negroes are more apathetic than whites?

Mr. WATKINS. I really cannot answer that, Senator. I do not know. They have tended through the years in the South, particularly in the rural South, to have different interests from the whites. For instance, I was raised—my playmates were young Negroes when I was a boy. The white boys would be more interested in baseball, in football; the Negro boys would be much more interested in hunting and fishing. The desires of the people just run in different lines.

Senator HART. But now that a Negro boy knows that there is not a color line in either football or baseball to prevent him, is there not a change in attitude?

Mr. WATKINS. I do not know what the Senator means by a change in attitude.

Senator HART. Well, the door is no longer shut to them as it was when you were a boy. Broad economic opportunities are open to the Negro athlete today. Has there not been any change in that attitude?

Mr. WATKINS. Do not misunderstand me. There was the sports available to them then. What I am saying is they preferred things—

differently from what most of the white boys did. Why that difference exists, I do not know.

The CHAIRMAN. Did you ever see white boys playing ball with the Negroes? The implication is that they were barred from it.

Mr. WATKINS. No; I have seen them quite often playing together. What I am saying is that the interest of the colored boy usually ran in a different direction from the white boy's.

Senator HART. To clarify, if I could, my question; I was not implying that the Negro boys and white boys in the South did not play together. I was not implying, I was stating a fact that whatever the Negroes' skill in those days, no big-league ball club was going to sign him up. And indeed, opportunities in professional football were very limited.

This has changed now. I was curious whether, since the door has been opened, this characteristic might not have changed in the younger Negro down South. It is going to change entirely if we open the courthouse door to make the trip across the street safe. Should there not be a change in attitude there, too?

Mr. WATKINS. Senator, I cannot answer your question, because I do not know the answer. But let me say this: The situation in the so-called deep Southern States, the Deep South, is not, in my opinion, anything like as bad or as critical as the rest of the Nation has been led to believe by much-publicized particular events. Nor do I think that the southern colored man is as desirous of the help that you are attempting to give him by this bill as you believe, or as many people over the country believe.

Let me say this: If you want to accomplish the goal, and I think you do, and if it is a desirable goal to encourage large percentages of both races to vote, and that is probably a desirable result, it can be done in one of two ways without absolutely breaking the back of the Constitution of the United States in the hope that the Supreme Court will sustain anything that this Congress passes.

First, you can do it either by filing one suit against each of these five States—you have already done it against Louisiana. Louisiana has a final judgment against it, taking out its literacy requirement as an illegal requirement. Now, the same may very well happen to Mississippi's requirement. Mississippi requires an interpretation of section of the Constitution. That may very well be taken out by the courts. The suit against Mississippi is in the court now.

But one suit against five or six States could cure what you are trying to cure in an indirect statistical, complicated bill here, which really does injury to the Constitution. If you do not want to do it by filing five suits, and and that is not too much, I do not think, of a burden for the U.S. Government. But if you do not want to do it that way, let us do it by a simple amendment, just as you did in the 24th amendment.

Senator KENNEDY. Just on that question, could I ask you, Has there been an increase in the number of Negroes who registered after passage of the 24th amendment?

Mr. WATKINS. Senator, I cannot answer your question. I do not know whether there has or has not.

Now, the 24th amendment, as you well know, applies only to Federal elections.

Senator KENNEDY. That is right.

Mr. WATKINS. To vote in my State, you still, in State elections, have to have your poll tax requirements.

Senator KENNEDY. I understand that, but I want to know whether there has been an increase in the number of Negroes that have been registered in order to vote in Federal elections.

Mr. WATKINS. I do not know, sir, whether there have or have not.

Senator ERVIN. I would be interested in an explanation of the registration in the District of Columbia, in the shadow of the Capitol, where they have a heavier Negro population than they do in Mississippi, and everybody was urging them to go out and vote, where they have 175,000 people of voting age population and only 67,200, or 38.4 percent, went out and voted. Maybe if somebody explained that to us, they could explain why there is apathy in Mississippi.

Mr. WATKINS. I think you are right, Senator. I think that same apathy is applicable anywhere. I am sure that is the answer to 90 percent of the trouble in the Southern States.

Senator ERVIN. You have a one-party system in Mississippi, do you not?

Mr. WATKINS. Yes, sir.

Senator ERVIN. How many counties do you have in Mississippi?

Mr. WATKINS. Eighty-two.

Senator ERVIN. How many of those counties have Republicans running on the county ticket?

Mr. WATKINS. The last time, about three or four.

The CHAIRMAN. Was it three or four where there was a Republican on the ticket, or was it a complete Republican ticket?

Mr. WATKINS. They would have one officer in two or three counties. They have not run a complete ticket in any county.

Senator ERVIN. Do you know of any county elections where the candidates are raising any Cain or spending a lot of time and energy hauling people out to the polls when all they need is one vote to get elected?

Mr. WATKINS. No, sir. I was amused at their selecting the general election in those States. Practically every election is decided in the primaries. The voting on the general election is just perfunctory.

Senator KENNEDY. Mr. Attorney General, on that very account, that it is a one-party State, who carried it in the national election?

Mr. WATKINS. This last national election?

Senator KENNEDY. Yes.

Mr. WATKINS. It went overwhelmingly for Mr. Goldwater. I think he got 87 percent of the vote in Mississippi.

Senator KENNEDY. Then you would not classify it as a strictly one-party State?

Mr. WATKINS. I think I would, Senator. That is the first time it has happened since the Civil War in Mississippi. I still think that Mississippians were being consistent in that vote. They were voting conservative.

The CHAIRMAN. How many county officers have the Republicans got in Mississippi?

Mr. WATKINS. How many county officers?

The CHAIRMAN. Yes, sir.

Mr. WATKINS. I know of no county officer, unless it is a county attorney in Lowndes County in Mississippi.

The CHAIRMAN. He did not run as a Republican, did he? He joined after he got elected.

Mr. WATKINS. I think he was elected and then switched parties.

We have two representatives in our State legislature who are Republicans.

The CHAIRMAN. Certainly it is a one-party State.

Mr. WATKINS. Yes, sir.

The CHAIRMAN. Now, Mr. Watkins, Mississippi is a rural State, is it not?

Mr. WATKINS. Yes, sir.

The CHAIRMAN. Probably the most rural State in the United States, is it not?

Mr. WATKINS. Yes, sir.

The CHAIRMAN. And there is apathy there. Is there any difference between the apathy to voting in Mississippi than in any other State in the Union of a rural nature?

Mr. WATKINS. Not that I know of.

The CHAIRMAN. The Attorney General was critical that in the presidential election (33 percent of the people voted in 1964. That is one of the reasons he urges this bill. The real election is the Democratic primary, is it not?

Mr. WATKINS. Yes, sir.

The CHAIRMAN. Now, in 1964, you had a Senator, a Congressman, and a presidential ticket for that election? Is that not right?

Mr. WATKINS. Yes, sir.

The CHAIRMAN. And you know that as a matter of fact, the ones that get the vote out is when the county board is running?

Mr. WATKINS. The board of supervisors, yes.

The CHAIRMAN. And that election was run the year before?

Mr. WATKINS. Yes.

The CHAIRMAN. Is not the real test of how many votes there would be in the Democratic primary when the State officers and the county officers are running?

Mr. WATKINS. That would be the only true test, Mr. Chairman.

The CHAIRMAN. And that shows a much higher percentage voting, does it not?

Mr. WATKINS. Right, sir.

The CHAIRMAN. I am going to put those figures in the record before the hearing is closed.

Are there any further questions?

Senator KENNEDY. Just in relating back to some figures that have been questioned by members of this committee, the civil rights figures, I think that in talking about rural areas—

The CHAIRMAN. State who furnished those figures.

Senator KENNEDY. The U.S. Commission on Civil Rights.

The CHAIRMAN. Where did they get them?

Senator KENNEDY. They say that in general, the use of the 1960 population—

The CHAIRMAN. From Mississippi, now.

Senator KENNEDY. I was not going to refer to Mississippi.

The CHAIRMAN. Oh, that is all right.

Senator KENNEDY. Just in considering the rural areas, looking these figures over, it seems that the State that had the highest percentage in 1964 in voting, 76.8, was Minnesota. The next State, rather, the highest was probably Utah, which was 76.9; Minnesota, 76.8; West Virginia, 75.2; Idaho, 75.8.

Those are the five States, and Wyoming, 73.2. Those States have the highest percentages voting, and I consider them certainly more rural than industrial.

The CHAIRMAN. And yes, but when they are electing county and State officers in the same election? I said that is what gets the vote out.

Senator ERVIN. Also, the margin between the Democratic and Republican Parties in those States is razor edge thin.—

Senator KENNEDY. But they are rural areas.

I want to commend you, Mr. Attorney General, for your presentation and the demeanor with which you have demonstrated your case here today. I think it has been most responsible and helpful. I only want to say that coming from a State that is proud of its traditions in the whole era of civil rights, I am the first one to agree with many of my brothers that there are areas of discrimination in all parts of the country. I certainly do not feel that any of us—I hope that you will understand—feel that we are suggesting by the thrust of our questions that we are trying to separate or identify any particular individual or question their good faith on this matter. I want to commend you for your testimony.

Mr. WATKINS. Thank you. I appreciate it very much.

Senator KENNEDY. Mr. Chairman, could I insert in the record, just before our next witness a brief statement. It has been stated on many occasions before this committee that Massachusetts was the birthplace of the separate but equal doctrine in the case of *Roberts v. The City of Boston*, decided in 1850. Admittedly this doctrine was stated in a case involving the public schools of Boston. It should be noted that in the year of that unfortunate decision, Negro children were indiscriminately admitted to the public schools of New Bedford, Nantucket, and Salem, Mass.

Moreover, for the record, I want to make it clear that the State of Massachusetts passed a law in 1855, 5 years after that decision, which stated—

In determining the qualifications of scholars to be admitted in any of the public schools, no distinction should be made on account of race, color, or religious opinions.

In discussing the history of racial segregation, it is also important to point out that Massachusetts was the first State legislature to abolish the practice of separation of races in the schools, before the Civil War. This question has been raised a number of different times by the members of this committee, and by some who have testified. I would appreciate it if the record could show this response after the appearance of Mr. Bloch, who was the first to point it out.

The CHAIRMAN. Yes, it will be included.

The Chair would like to state that Mr. Watkins has made a very outstanding statement, one of the greatest that I have heard since I have been a member of this committee. I think it has been very

helpful to the committee and to the Senate in consideration of this bill.

(The complete statement of Mr. Watkins follows:)

STATEMENT OF THOMAS H. WATKINS, ATTORNEY AT LAW

It is a privilege and an honor to be permitted to appear before this committee. I am here at the request of Governor Johnson, Senator Eastland, and Senator Stennis of Mississippi, and my purpose is to defend the Constitution of the United States.

In destroying the constitutional rights of Mississippi and other States to use literacy tests as a qualification of the privilege of voting, S. 1564 constitutes an undisguised frontal assault on the Constitution, as interpreted by the Supreme Court of the United States for more than 100 years. This bill flies squarely in the face of the same Constitution that every U.S. Senator has taken an oath to uphold.

The very first article of that Constitution authorizes the individual States to decide the qualifications of voters in both Federal and State elections, subject only to the proviso that whoever is deemed qualified to vote for "the most numerous branch of the State legislature" is automatically qualified to vote in Federal elections.

Making this a State function was no casual decision. At the time of the adoption of the Constitution, there was wide divergence of opinion among the States as to what should be the voting qualifications of their respective citizens. New Hampshire permitted only male inhabitants 21 years of age who were not paupers to vote. Massachusetts limited the privilege of voting to male inhabitants 21 years of age who had an estate of the value of £60. Connecticut permitted only those to vote who had "maturity in years, quiet and peaceful behavior, a civil conversation, and forty shillings freehold or forty pounds personal estate." New York limited the privilege of voting to male inhabitants of full age, possession of a freehold of the value of £20 within the county and had actually paid taxes to the State. Pennsylvania permitted only freemen who paid taxes to vote. Maryland limited the privilege of voting to freemen who were property owners. North Carolina allowed only those to vote who were freemen 21 years of age who owned 50 acres of land to vote. South Carolina limited voting to free white men who owned 50 acres of land. *Minor v. Happersett* (21 Wall 162, 21 L. Ed. 627).

Recognizing that each should reserve the right to say which of its citizens could exercise the privilege of voting, the Constitution left the fixing of voting qualifications to the States and provided in section 2 of article I that in choosing Representatives for Congress "The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature."

This provision met with the complete approval of the delegates. According to James Madison's "Journal of the Constitutional Convention," the only dissension arose when Gouverneur Morris proposed that all electors be required to be freeholders. This suggestion was rejected on the theory that the States were the best judges of the circumstances and temper of their own people.

During the Constitutional Convention the question of Federal control over qualifications of electors arose. Both George Mason and James Madison expressed the view that this would be a dangerous power in the hands of the National Legislature.

The section was unanimously approved by the Convention on August 8, 1787. During the campaign for ratification of the Constitution, this section was strongly supported in "the Federalist Papers."

Article II, section 1, paragraph 2, concerning the mode of choosing electors for President and Vice President, is clear and concise: "Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress * * *."

There can be no doubt that the framers of the Constitution intended that the entire process of choosing electors was to remain in the hands of the States. This was clearly followed by adoption of the 9th and 10th amendments reserving unto the States and unto the people all powers and rights not delegated to the United States by the Constitution.

A literacy test as a qualification for voting was adopted by Connecticut in 1855 and by Massachusetts in 1857.

But proponents of this bill will say that all of this was prior to the adoption of the 15th amendment under which they claim the power to establish voter qualifications in some of the States. Does the 15th amendment give Congress any such power? Clearly, it does not.

The fact that the 15th amendment was not intended to take from the States the exclusive right to fix voting qualifications is shown by the fact that the 17th amendment, adopted many years later, contains the identical language originally used in section 2 of article I of the Constitution:

"The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures."

The 15th amendment does prohibit any State from using race or color as a prerequisite for qualifying to vote. Congress has the authority to enforce this amendment by appropriate legislation. Congress can make it a criminal offense to deny the right to vote because of race or color, and Congress can fix the penalties for its violation. It has done so. Congress can provide for injunctive relief against States violating this constitutional provision. It has done so. Congress can authorize suits to be filed by the United States to enforce the 15th amendment, and Congress may give jurisdiction of such actions to three-judge courts. It has done so.

The 15th amendment did not give Congress the power to prohibit discrimination on grounds of education. This bill, in seeking to abolish literacy tests, does just that. After the 15th amendment had been passed by the House, the Senate amended it to add prohibitions against discrimination on grounds of education. This amendment was defeated in the House, and the 15th amendment ultimately passed in its present form, prohibiting only discrimination because of race or color. In other words, those who framed the 15th amendment specifically refused to give Congress the power to do that which S. 1564 seeks, the elimination of literacy or educational requirements as qualifications for voters.

It is clear that Congress and the States intended the 15th amendment to mean exactly what it said. The color of a man cannot be a reason to grant or deny him the right to vote. But all other qualifications are left entirely to the wisdom of the States.

Mr. Justice Story, in discussing the 15th amendment, stated the correct rule concisely at page 710 of volume 2 of "Story on the Constitution" (1891), as follows:

"There was no thought at this time of correcting at once and by a single act all the inequalities and all the injustice that might exist in the suffrage laws of the several States. There was no thought or purpose of regulating by amendment, or of conferring upon Congress the authority to regulate, or to prescribe qualifications for, the privilege of the ballot."

The 15th amendment does not give the vote to anyone. It does not alter in any way the provisions of article I of the Constitution, which clearly reserved to the States the power to fix the qualifications of voters. In 1876 the Supreme Court stated in *Reese v. United States*, 92 U.S. 214:

"The 15th amendment does not confer the right of suffrage upon anyone. It prevents the States, or the United States, however, from giving preference, in this particular, to one citizen of the United States over another on account of race, color, or previous condition of servitude * * *."

"The power of Congress to legislate at all upon the subject of voting at State elections rests upon this amendment, and can be exercised by providing a punishment only when the wrongful refusal to receive the vote of a qualified elector at such elections is because of his race, color or previous condition of servitude."

Other cases decided by the Supreme Court through the years have upheld this principle. In *Pope v. Williams*, 193 U.S. 621 (1904), the Court reaffirmed its earlier holding that the States retained control over suffrage, even after the adoption of the 15th amendment. In that case, the Court said:

"Since the 15th amendment the whole control over suffrage and the power to regulate its exercise is still left with and retained by the several States, with the single restriction that they must not deny or abridge it on account of race, color or previous condition of servitude."

"The question whether the conditions prescribed by the State might be regarded by others as reasonable or unreasonable is not a Federal one."

In *Guinn v. United States*, 238 U.S. 347 (1915), one of the questions involved was whether the use by a State of a literacy test conflicted with the 15th amendment. In that case the Supreme Court held that the establishment of a literacy test was a valid exercise by a State of a lawful power vested in it and was not subject to supervision.

This holding was reaffirmed by the Supreme Court in 1959 in *Lassiter v. North Hampton County Board of Elections*, 360 U.S. 45, which involved a literacy test required by the State of North Carolina. In holding that a State may apply a literacy test to all voters, irrespective of race or color, the Supreme Court recognized that the State has the sole power to determine the qualifications of voters, and said:

"The States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised. *Pope v. Williams*, 193 U.S. 621, 633. *Mason v. Missouri*, 179 U.S. 328, 335, absent of course the discrimination which the Constitution condemns."

* * * * *

"Literacy and illiteracy are neutral on race, creed, color, and sex, as reports around the world show. Literacy and intelligence are obviously not synonymous. Illiterate people may be intelligent voters. Yet in our society where newspapers, periodicals, books and other printed matter canvass and debate campaign issues, a State might conclude that only those who are literate should exercise the franchise. Cf. *Franklin v. Harper*, 205 Ga. 779, 55 S.E. 2d 221, appeal dismissed 339 U.S. 946. It was said last century in Massachusetts that a literacy test was designed to insure an 'independent and intelligent' exercise of the right of suffrage. *Stone v. Smith*, 159 Mass. 413-414, 84 N.E. 521. North Carolina agrees. We do not sit in judgment on the wisdom of that policy. We cannot say, however, that it is not an allowable one measured by constitutional standards."

In *Williams v. Mississippi*, 170 U.S. 213, 42 L. Ed. 1012 (1898), the Supreme Court of the United States upheld the literacy test required by the Mississippi Constitution. In *Trudeau v. Barnes*, 65 F. 2d 583 (1933), the United States Court of Appeals for the Fifth Circuit upheld the constitutionality of the Louisiana literacy requirement.

I respectfully submit that there is no authority to the contrary. If it is the desire of the people of this country to take from the States the right to require a certain degree of literacy in order to qualify to vote, this must be accomplished by an appropriate amendment to the Constitution. The power of Congress in this respect is exactly the same as it is with respect to prohibiting the requirement by the States of a payment of a poll tax to vote in Federal elections. It was correctly recognized that this could be done only by amending the Constitution. Accordingly, the 24th amendment to the Constitution was passed and adopted.

On April 10, 1962, Hon. Robert F. Kennedy, Attorney General of the United States, accompanied by Hon. Burke Marshall, Assistant Attorney General, testified before this committee with respect to S. 480, S. 2750, and S. 2979. The Attorney General supported only S. 2750 which did not take from the States the right to fix qualifications of voters. During that testimony, the Attorney General stated:

"This legislation does not set the qualifications of these voters. It merely sets the test, the testing of those qualifications. And, in my judgment, that is clearly constitutional.

"If we were setting the qualifications for the individuals then, I believe that it would be unconstitutional and would require a constitutional amendment" (p. 269).

* * * * *

"I would say that if we came in here and offered legislation that set the qualifications of the voters that it would be unconstitutional; not unconstitutional only under article I, section 4, but under the 14th and 15th amendments. I would agree with you entirely then, but we are not doing that" (p. 271).

* * * * *

"For instance, I think that the Civil Rights Commission suggested and recommended that we do away with all literacy tests, at least four out of the six members did, and I would be opposed to that" (p. 293).

"I would have grave doubts about the constitutionality of that particular piece of legislation which abolishes all literacy tests, as I understand it" (p 296).

"I think that a State, if it determines that it wants to use or utilize a literacy test, should certainly be permitted to do so" p. 297).

It is, therefore, apparent that Attorney General Robert F. Kennedy, with the excellent advice of Hon. Burke Marshall, was of the opinion that legislation which deprived the States of the right to use literacy tests as a requirement for voting would be unconstitutional and that only a constitutional amendment could make that change in our basic law.

I am astonished to find Attorney General Nicholas Katzenbach testifying directly to the contrary on March 18, 1965, before Subcommittee No. 5 of the Committee on the Judiciary of the House of Representatives. The Attorney General was also accompanied by Hon. Burke Marshall as adviser.

In an effort to sustain the constitutionality of the bill now before this committee, the Attorney General takes the position that Congress has the same power to legislate under the 15th amendment as it does under the commerce clause, section 8 of article I, which provides:

"The Congress shall have power * * * to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

The Attorney General makes no distinction between the unlimited affirmative right of Congress to legislate in the field of commerce and its very limited right to prohibit the States and the Federal Government from discriminating in the field of voting because of race or color under the 15th amendment. The Attorney General relies on *Gibbons v. Ogden* (9 Wheat 1), and its description of the power of Congress to regulate interstate commerce.

The 15th amendment, like the 14th amendment, merely prohibits a State from discriminating. In *Owney v. Morgan* (65 L. Ed. 837, 256 U.S. 94), the Court said:

"Its function is negative, not affirmative, and it carries no mandate for particular measures of reform."

The Attorney General states that the bill will deny the use of "onerous, vague, unfair tests, and devices enacted for the purpose of disenfranchising Negroes." The bill, however, does not use this language. It prohibits the use of any literacy tests. If the bill prohibited onerous, vague, and unfair tests which tended to disenfranchise Negroes, it would be very much closer to the power granted Congress by the 15th amendment.

The Attorney General states: "It is only after long experience with lesser means and a discouraging record of obstruction and delay that we resort to more far-reaching solutions." Noting that the description of this bill as "far reaching" is an understatement, I respectfully remind the committee that the bill was offered only 8 months after passage of title I of the Civil Rights Act of 1964 which granted broad new powers for the enforcement of the 15th amendment. This is much too short a time within which to determine whether this recently passed legislation is adequate.

The *Lassiter* case was again cited with approval by the Supreme Court of the United States on March 1, 1965, in *Carrington v. Rash* (13 L. Ed. 2d 675).

The classification of States (and/or political subdivisions thereof) to which the act is applicable is not a rational classification, but is discriminatory, unrealistic, arbitrary and unreasonable

This act does not apply to all States or political subdivisions but is applicable only to a special class of States or political subdivisions. This classification violates the 5th amendment to the Constitution. The prohibition against denial of due process of law is, under this amendment applicable to the United States. (*Bolling v. Sharpe*, 98 L. Ed. 884. Cf. separate opinion *Portland Cement Co. v. Minnesota*, 3 L. Ed. 2d at 427.)

Moreover, article IV, section 2, of the Constitution of the United States provides: "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

It is thoroughly established that any classification must rest always upon some difference, and this difference must bear a reasonable and just relation to the purpose of the act in respect to which classification is proposed.

The members of the class are determined by the Attorney General, based on findings of the Director of the Census, either: (1) That less than 50 percent

of the persons of voting age residing therein were registered on November 1, 1964; or (2) that less than 50 percent of such persons voted in the presidential election of November 1964.

This classification is unrealistic, arbitrary, and unreasonable, as well as discriminatory. It does not pretend to prevent discriminatory use of tests except in approximately six States. Other States can have and use the tests as much as they please and yet not be within the class. One State having only 49 percent of the persons of voting age residing therein registered on November 1, 1964, would come within the act while another State with only 50.1 percent of the persons of voting age residing therein registered would not come within the act regardless of the discrimination in that State.

The evil sought to be avoided is the discriminatory use of tests, and whether or not 50 percent of the residents were registered is not by any theory determinative of the discriminatory use of tests. It might be due to apathy or a failure on the part of residents to attempt to register. Registration is not required and cannot be required.

In other words, the basis for the classification is a conclusive legislative presumption that where 50 percent of the residents of a State or political subdivision did not vote in the presidential election of 1964 that there had been a discriminatory use of tests for voter qualification, while this was not true if only 51 percent of the residents voted in said election.

This presumption is conclusive in that no section of the act authorizes a contest thereof. The only right of any State to contest is the right to attempt to be removed from the class, as provided by section 3(c), page 2, under the impossible condition that the State or political subdivision has the burden of proving that no person acting under color of law has engaged during such period (the 10 years preceding) in any act or practice denying or abridging the right to vote for reasons of race or color. No State or political subdivision anywhere could so prove.

Moreover, the class is a closed class. It permanently excludes all other States or political subdivisions from ever coming within the act, regardless of later discrimination, the determinative period being November 1, 1964. States not within the act on that date may proceed to use tests and devices for voter qualification at will and discriminate in the application thereof at will without coming within the class. The fact that less than 50 percent of the voters were registered in 1963 or in 1965 is immaterial. Nor can any State or political subdivision in the class as of that date be removed from the class even if thereafter more than 50 percent of the residents register or vote in presidential elections.

The Supreme Court of the United States has very recently condemned this type of classification in *McLaughlin v. Florida*, 13 L. Ed. 2d 222. The Court quoted with approval:

"Classification must always rest upon some difference which bears a reasonable and just relation to the act in respect to which classification is proposed, and can never be made arbitrarily and without any such basis * * * arbitrary selection can never be justified by calling it classification."

In the case of *Heiner v. Donnan*, 76 L. Ed. 772, 285 U.S. 312, the Court held that a classification could not be based upon conclusive presumption.

The above case was recently cited with approval in *Carrington v. Rash*, 13 L. Ed. 675 (March 1, 1965).

Numerous provisions of the act deny States (and/or political subdivisions thereof) and the citizens thereof due process of law contrary to the requirements of the fifth amendment to the Constitution, and the act is prohibited by article I, section IX(3), prohibiting the Congress from passing a bill of attainder or an ex post facto law.

Section 3(a), page 2, creates a conclusive or irrebuttable presumption that if 50 percent of the residents were not registered by November 1, 1964, or if 50 percent did not actually vote in the presidential election of November 1964, that the State is guilty of such massive discrimination in the application of tests for voter qualifications that the State is separately classified and denied all its political rights, with no opportunity given to it to rebut this presumption.

Section 3(c), page 2, provides that no State can be removed from the classification and regain its political rights lost under 3(a) until after a final judgment of a three-judge court of the District of Columbia and the Supreme Court that " * * * neither the petitioner nor any person acting under color of law has engaged during such period in any act or practice denying or abridging the right

to vote for reasons of race or color * * *." This is known by Congress to be an impossible requirement. Furthermore, no action whatsoever can even be brought for 10 years after any final judgment of any court of the United States, whether entered prior to or after the enactment of this act, determining that there has been any denial of right to vote by reason of race or color anywhere in the territory of such petitioner. The act denies a State its political and constitutional rights for past offenses and does not punish only for denials or abridgment of the right to vote after the enactment of the act; i.e., is a bill of attainder.

Section 4(a), page 3, provides for the commencement of the examiner procedure at the will of the Attorney General under either of two separate circumstances. (1) That he has received complaints in writing from 20 or more residents of a political subdivision coming under section 3(a) alleging that they had been denied the right to vote by reason of race or color. There is no requirement that these be affidavits or sworn statements. The Attorney General is given absolute discretion as to whether he believes such complaints to be meritorious. No right is given the State to challenge these statements or to be heard thereon, and the affected State is, therefore, denied any right to a hearing as to whether or not the examiner procedure should go into effect in that area or unit; or (2) the Attorney General is granted the arbitrary right to institute examiner procedure if in his judgment it is necessary to enforce the guarantees of the 15th amendment. No right to a hearing is granted the State.

By section 5(a), page 4, rights of the State with reference to registration of electors are taken from the State. The Federal examiners are given the full right to examine applicants concerning their qualifications for voting. Arbitrary power is given the Commission. The section provides that the application shall be in "such form as the Commission may require." The only requirement is that it contain an allegation that the applicant is not registered to vote. The requirement that within 90 days preceding his application he has been denied the opportunity to register is placed in the section but then it is provided that this provision "may be waived by the Attorney General." The Attorney General thus may, at his whim or fancy, write out any requirement of exhaustion of remedies by the applicant. There is no positive requirement that the applicants meet the Mississippi age, residence, sanity, or absence of criminal conviction qualifications to vote. The only requirement is: "Any person whom the examiner finds to have the qualifications prescribed by State law in accordance with instructions received under 6(b) shall promptly be placed on a list of eligible voters." Section 6(b), page 7, is merely that the Civil Service Commission "shall, after consultation with the Attorney General, instruct the examiner concerning the qualifications required for listing." Thus, the Commission could ignore entirely the requirements of State law or determine under the advice of the Attorney General which one should be honored and which one ignored.

Section 6(a), page 6, purports to give election officials an opportunity to challenge the list of eligible voters prepared by the examiner. The list is required to be transmitted to the appropriate election officials at the end of each month, and yet a challenge must be made within 10 days after the challenged person is listed. Presumably it was intended to be 10 days after the list was transmitted, but the act does not so provide. No opportunity of any representative of any election official to be present at the hearing of the applicant is granted. No requirement is made that the records of the examination of the applicant be preserved or be in writing or be available to election officials. All that the election officials would have would be a bare list of eligible voters, and an investigation thereof within 10 days would be impossible. The election officials would have no knowledge of any facts which would make the applicant a qualified elector or which would keep him from being a qualified elector. The challenge must be accompanied by the affidavit of at least two persons having personal knowledge of the facts constituting grounds for the challenge. The burden of proof of lack of qualifications for registration is on the election officials. The finding of the hearing officer on such a challenge cannot be overturned "unless clearly erroneous." The practical effect of section 6(a) is to deny the State or political subdivision any right whatsoever to challenge the list.

Section 8, page 8, arbitrarily takes from the State all legislative functions with regard to voter qualifications. It provides that no future law or ordinance can be enacted imposing qualifications for voting, or rather that it cannot be enforced, if passed, until the State of Mississippi has brought an action for declaratory judgment against the United States in the District Court for the

District of Columbia and secured an adjudication, with the accompanying burden of proof, that "such qualifications or procedures will not have the effect of denying or abridging rights guaranteed by the 15th amendment." This prohibition is against any new enactment regardless of its validity or its constitutionality.

The mere possibility of future improper administration of a statute is no ground for forbidding the legislation valid on its face and valid if properly administered.

By section 9(a), page 8, severe criminal penalties are imposed. Subparagraph (e) goes so far as to permit the holding up of the election of any official until final hearing, and therefore, for an indefinite time, whenever a single person "alleges to an examiner" that he has not been permitted to vote or that his vote was not counted. No statement under oath by such person is required. The U.S. attorney immediately applies to the district court for an order enjoining the certification of the results of the election, and "the court shall issue such an order pending a hearing to determine whether the allegations are well founded." There is thus granted the right for a preliminary injunction without a hearing and an unlimited holding up of an election until court procedure is concluded.

Section 11(b) provides that the only court having jurisdiction over the subject matter of the act is the District Court of the District of Columbia, a thousand miles from some of the States which are included in the class.

There is no doubt but that the provisions of this act violate the constitutional guarantees of the right to justice and remedies for injuries. The U.S. Constitution, through the due process clause of the fifth amendment, guarantees open courts, and a remedy for injuries and prompt justice is guaranteed. While judicial remedies can be suspended, they can only be suspended in an emergency and for a reasonable time. Such guarantees are derived from the Magna Carta and are self-executing and mandatory. The Magna Carta conferred on the people of England one of the most highly prized rights of man, that is, the right guaranteed by the brief but expressive clause: "We will sell to no man, we will not deny to any man, either justice or right." Due process of law not only requires open courts and prompt justice, but requires a hearing which is a hearing in fact and not merely in name.

Here the State of Mississippi has been condemned by legislative classification without an opportunity to be heard before its rights and privileges as a State are withdrawn. If it is to question the classification, it must do so as a plaintiff with the burden of proof imposed on a plaintiff and must sustain an impossible burden of proof and must wait for 10 years to do so. If it is to enact any new law, it must sustain the burden of proof of innocence, not merely deny guilt.

In *Garfield v. United States*, 53 L. Ed. 168, 211 U.S. 219, the Supreme Court of the United States said:

"The right to be heard before property is taken or rights or privileges withdrawn which have been previously legally awarded is of the essence of due process of law. It is unnecessary to recite the decisions in which this principle has been repeatedly recognized. It is enough to say that its binding obligation has never been questioned in this court."

To the same effect is *Bailey v. Alabama*, 55 L. Ed. 191, 219 U.S. 219.

The opportunity to be heard is an essential requisite of due process of law. *Postal Telegraph v. Newport*, 247 U.S. 464, 62 L. Ed. 1215.

Moreover, it must be a real opportunity to be heard as was stated in *Brinkerhoff-Paris Trust & Sav. Co. v. Hill*, 74 L. Ed. 1107, 281 U.S. 673.

This bill is in reality a bill of attainder directed at the entire citizenry of the State of Mississippi as a class and depriving them of political rights or suspending their political rights to control State elections.

In *Cummings v. Missouri*, 18 L. Ed. 356, 71 U.S. 277, the Court defined a bill of attainder as follows:

"A bill of attainder is a legislative Act, which inflicts punishment without a judicial trial. * * * These bills may be directed against (individuals or) a whole class * * *

"Bills of this sort," says Mr. Justice Story, "have been most usually passed * * * in times of violent political excitements * * *." Punishment * * * embraces deprivation of suspension of political or civil rights * * *. Any deprivation or suspension of * * * rights for past conduct is punishment * * *. These bills may inflict punishment absolutely * * * conditionally. * * * To

make the enjoyment of a right dependent upon an impossible condition is equivalent to an absolute denial of the right under any condition, and such denial, enforced for a past act, is * * * punishment imposed for that act.

"In (cases of bill of attainder) the legislative body in addition to its legitimate function, exercises the powers and office of judge * * * It pronounces upon the guilt of the party, without any of the forms of safeguards of trial; it determines the sufficiency of the proof produced * * *. It fixes the degree of punishment in accordance with its own notions of the enormity of the offense.

"(Whether) the clauses * * * declare * * * give (or) * * * assume it * * * the legal result (is) the same, for what cannot be done directly cannot be done indirectly. The Constitution deals with substance, not shadows * * *. It (the Constitutional prohibition) intended that the rights of the citizens should be secure against deprivation for past conduct by legislative enactment, under any form, however disguised."

In *Ex parte Garland*, 71 U.S. 333, 18 L. Ed. 366, the Court struck down an act of Congress as a bill of attainder prohibited by the Federal Constitution.

Here the citizens of Mississippi are denied their constitutional right to prescribe the qualifications of electors, if they are determined, without a hearing, to come under section 3(a) of the act, because of facts existing prior to the date of the act. This denial lasts for "10 years after the entry a final judgment of any court of the United States, whether entered prior to or after the enactment of this Act * * *." This is unquestionably a deprivation of political rights for a full 10-year period because of past activities.

That this placing of the burden of proof of lack of guilt on the State of Mississippi is denial of due process is clearly brought out in *Speiser v. Randall*, 2 L. Ed. 2d 1480, 357 U.S. 513.

In *Bailey v. Alabama*, 219 U.S. 219, 239, 55 L. Ed. 191, 200, 31 S. Ct. 145, the Court said:

"It is apparent that a constitutional prohibition cannot be transgressed indirectly by the creation of a statutory presumption any more than it can be violated by direct enactment. The power to create presumptions is not a means of escape from constitutional restrictions."

S. 1564, in denying to a few States rights enjoyed by the other States of the Union, is invalid

The proposed legislation would deprive Mississippi and a few of her sister States of the right to fix qualifications of voters. It takes from those few States the right to legislate in this field. The remaining States of the Union are left free to exercise their full constitutional rights in this field. Thus, the act attempts to place Mississippi and a few other States in a straitjacket so far as their election laws are concerned. In so doing the act is invalid. There is no such thing as a second-class State. Every State in this Union is equal to every other State and is guaranteed the rights and privileges enjoyed by every other State. In *Coyle v. Smith*, 221 U.S. 559, 55 L. Ed. 853, the Supreme Court said:

"The power is to admit 'new States into this Union.'"

"This Union" was and is a union of States, equal in power, dignity, and authority, each competent to exert that residuum of sovereignty not delegated to the United States by the Constitution itself."

* * * there is to be found no sanction for the contention that any State may be deprived of any of the power constitutionally possessed by other States, as States, by reason of the terms in which the acts admitting them to the Union have been framed."

"To this we may add that the constitutional equality of the States is essential to the harmonious operation of the scheme upon which the Republic was organized. When that equality disappears we may remain a free people, but the Union will not be the Union of the Constitution."

In *Butler v. Thompson*, U.S.D.C. Va., 97 F. Supp. 17, affirmed 241 U.S. 937, 95 L. Ed. 1365, it was held that an act of Congress of 1870 prohibiting the State of Virginia from changing its constitution so as to deprive any class of citizens the right to vote would be invalid, if construed to prevent that State from enlarging to 3 years its poll tax requirements as a condition precedent to the right to vote. The court said:

"The act of 1870, too, must be studied against the background of the tragic era of which it was a part."

"Nor was this act a compact under which Virginia, after the Civil War, was readmitted to the Union. The Supreme Court has ruled that the Confederate States were never out of the Union and, hence, there was no necessity for readmission. (*State of Texas v. White*, 7 Wall. 700, 74 U.S. 700, 19 L. Ed. 227.)

"This act does not attempt to place Virginia in a straitjacket so far as the election laws of Virginia are concerned. If the act made that attempt, the act would be invalid. All States, after their admission into the Federal Union, stand upon equal footing and the constitutional duty of guaranteeing each State a republican form of government gives Congress no power in admitting a State to impose restriction which would operate to deprive that State of equality with other States."

S. 1564 violates the constitutional requirement that trial of all crimes shall be by jury, and such trials shall be held in the State where said crimes shall have been committed

S. 1564 completely ignores the fact that clause 3, of section 2 of article III provides:

"The Trial of all Crimes, except in Cases of Impeachment, shall be by jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed."

The bill also ignores the sixth amendment to the Constitution which provides:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence."

Section 9 of the bill provides criminal penalties which include a \$5,000 fine or imprisonment for not more than 5 years, or both, for violations of the act.

Section 8 of the act provides for the filing of actions thereunder in the U.S. District Court for the District of Columbia, and further provides:

"All actions hereunder shall be heard by a three-judge court, and there shall be a right of direct appeal to the Supreme Court."

Section 11(b) provides that no court other than the District Court for the District of Columbia shall have jurisdiction to issue any declaratory judgment or injunctions against the enforcement of the bill. The act clearly violates the above quoted sections of the Constitution as well as the seventh amendment, which provides:

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

The composition of and procedure before three-judge courts is established by section 2284 of title 28, United States Code. This Federal statute does not authorize or permit the right of trial by jury before a three-judge court. Therefore, the provisions of this act, and specifically section 8 thereof, requiring "all actions hereunder" to be heard by a three-judge court automatically deprives a person charged with a criminal offense under this act of a trial by jury as guaranteed by the Constitution of the United States. The act is clearly unconstitutional in this respect.

The reason for the bill is perfectly obvious and known to all. Civil rights organizations began well-organized demonstrations in Selma, Ala. They were continued day after day and week after week until the inevitable act of violence occurred. Television cameras were present to publicize this event before the entire Nation. The leader of the demonstrations immediately went to Washington and was afforded an interview by the President and the Vice President of the United States. Under highly emotional circumstances, the President presented this bill to a joint session of Congress, calling for its immediate passage. Enveloped by this mass hysteria, the Senate of the United States orders this committee to report a bill fraught with constitutional defects back to the Senate by April 9, 1965. I respectfully submit that this is not the atmosphere or the manner in which serious constitutional questions should be resolved. Instant legislative action, in an effort to cure what is believed to be an existing wrong, can only do irreparable damage to the constitutional rights of the people of this great country.

Senator John F. Kennedy, in "Profiles in Courage," described Senator George Norris' opposition to the armed ship bill by saying:

"He was fearful of the bill's broad grant of authority, and he was resentful of the manner in which it was being steamrolled through the Congress. It is not now important whether Norris was right or wrong. What is now important is the courage he displayed in support of his convictions."

The same author also quotes Senator Norris as follows:

I have no desire to hold public office if I am expected blindly to follow in my official actions the dictation of a newspaper combination * * * or be a rubber-stamp even for the President of the United States.

I hope and pray that the wisdom of that outstanding liberal Senator is embodied in the breasts of a sufficient number of the present Members of this august body to grant right and reason an opportunity to be heard.

The present emotionalism does not justify taking constitutional shortcuts. A desirable goal does not justify an unconstitutional means. If the accomplishments of this bill are desirable, let them be forthcoming in the only legal way—by constitutional amendment. The first President of our country, mindful of the disposition of men to shake off the restraining bonds of the Constitution when the situation seemed to demand it or make it politically expedient, said in his farewell address:

If, in the opinion of the people, the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this in one instance may be the instrument for good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance, in permanent evil, any particular or transient benefit which the use can at any time yield.

I appreciate very much the courtesies extended to me by the chairman and members of this committee.

The CHAIRMAN. We have Mr. Button, the attorney general of Virginia, and Mr. Gray. Which one desires to testify first?

STATEMENT OF ROBERT Y. BUTTON, ATTORNEY GENERAL, COMMONWEALTH OF VIRGINIA—Resumed

Mr. BUTTON. Mr. Chairman and members of the committee, I am Robert Y. Button, attorney general of Virginia.

I have prepared a statement, sir. Mr. Gray does not have a completely prepared statement. If it is satisfactory to the committee, I shall file my statement with the committee and make just one or two observations that are partly in this statement and partly without.

The CHAIRMAN. Proceed, sir.

Mr. BUTTON. First, I want to reemphasize what Mr. Kilpatrick said this morning about what is required in Virginia to register. A prospective voter is required to fill out in his own handwriting a form supplied by a registrar indicating, and this is all that has to be shown, the applicant's age, date, and place of birth, residence, and occupation at the time of registration, and for 1 year next preceding, whether or not he has previously voted and, if so, the State, county, and precinct in which he last voted.

Now, sir, we feel that that is a reasonable request to make of a person to register. We do not consider that a literacy test. However, under this bill, it could be so construed.

Now, the bill attempts to do away with discrimination on account of race or color.

Senator KENNEDY. Mr. Attorney General, are you trying to suggest that that is—as I understand it, that is part of the Virginia constitution?

Mr. BUTTON. Right, sir.

Senator KENNEDY. But you are also trying to suggest that there has not been, since the time of the acceptance of the constitution, some adjustment of those broad provisions, or at least some procedures in which they have been applied? I am thinking in terms of the 1958 Virginia statute, saying that applicants must register without aid, suggestion, or memorandum, and on a blank piece of paper?

Mr. BUTTON. We have an optional system, Senator.

Senator KENNEDY. Since you are discussing this question which you opened with, if you could give us the benefit of—

Mr. BUTTON. We have an optional system in Virginia in which the registrar may follow either one or the other. One is the so-called blank paper ballot, the registration form which you referred to, which has printed at its top each item that I referred to. Below that there is nothing except for him to write on the blank paper.

Senator KENNEDY. Is this completely discretionary as to whether the registrar gives a blank piece of paper or gives an application?

Mr. BUTTON. But the blank piece of paper has to be filled in with information. It has the same information as the form with the lines. The form with the lines has lines on it and listed opposite that, "Name," "Age," and he writes opposite that. Neither of them has any additional requirements.

Senator KENNEDY. Is that discretionary?

Mr. BUTTON. The registrar has that discretion.

Senator KENNEDY. Have there been cases brought in the State of Virginia which questioned whether the registrars have refused to give Negroes the more complete application blank?

Mr. BUTTON. I do not recall any, Senator. There was one brought in which an individual who happened to be a Negro came in with the forms prepared by herself. She happened to be a lady. She came in with a form she had prepared herself, which had this application she had prepared herself. The registrar would not permit it and gave her the form. She refused to fill out his form, which was identical to her form. She went to court and the court said she should have been permitted to use her form.

Senator KENNEDY. The court said—

Mr. BUTTON. That she should have been permitted to use her form. The form she brought in was identical to the form he gave her.

Senator KENNEDY. But the court said that she should have been permitted to use hers under the Virginia statute?

Mr. BUTTON. That is right.

Senator KENNEDY. As I understand it, the form she brought in was identical to the form he could have given her but did not, is that correct?

Mr. BUTTON. That is right, sir. He just gave her his form.

Senator KENNEDY. Therefore, the registrar in that particular case exercised discretion in which form he was given to her, where he had the opportunity of giving the blank form or the form which outlines in somewhat greater detail the application; the registrar gave to her the blank form and she thought she out to be entitled to the other and the court upheld that?

Mr. BUTTON. That is right.

Senator KENNEDY. I want you to complete your other testimony. But you indicated, as I understand, that that decision is being appealed at the present time, is that correct?

Mr. BUTTON. No, sir; that decision is not being appealed. There has been a temporary order entered by the court which has not been made final by the court. It is still in the same courts. It is not questionable or appealable.

Senator KENNEDY. Do you have any indication yourself with regard to the outcome of that decision?

Mr. BUTTON. No, sir.

Senator KENNEDY. Is not the decision, as far as you are concerned, satisfactory as to the attorney general of Virginia, that you would enforce the provisions of the Virginia law as interpreted by that court to insure that registrars now will give to applicants who make such application the more complete form?

Mr. BUTTON. There has been sent out, I think, Senator, this form that has been approved by the court that you are referring to, to all the registrars of the State, with the suggestion that that is the proper form.

Senator KENNEDY. And are you prepared, in any places where those are not used, in the light of the decision of the court, to insure that those forms will be used?

Mr. BUTTON. Under our constitution, sir, it is optional. I do not know that I can compel the registrars to use it. But the form is being sent to the registrars with the suggestion that they do.

Senator KENNEDY. Can you give me the basis of why the lower court made such a decision? Quite obviously—I have not read in detail the lower court's decision, but it is my understanding that the lower court felt that the applicant was entitled to the more complete registration form as a matter of law.

Mr. BUTTON. The difference was, sir, that she came in with the form she had prepared herself, and the registrar would not accept that and said, "You put it on my form." The information on both forms that was required was identical.

Senator KENNEDY. Mr. Attorney General, I only raise this point because this morning we had, as you well heard, statements with regard to the Virginia situation and the application of the literacy test, which was very outstanding testimony. One of the points which I think is of significance in understanding your initial statement, is that you pointed out that the application requires only the name, age, date, place of birth, and residence, and occupation for 1 year next preceding, of the applicant, and he must say whether he had previously registered in the State or county or precinct, where he voted last. I think the record should also show that Virginia passed a law in 1958 and one in 1960, which provide a discretionary factor to the registrar, which

gives him the ability to give one or two different forms to the applicant.

Mr. BUTTON. That is correct, sir. I reiterate, sir, the information contained on both is identical. The only difference is that one is listed out separately and the other is on the top of the page, for which you get the information. In each case, you would have to read, sir.

Senator KENNEDY. If they are identical, then you as the chief law enforcement agent of the State would have no objection whatsoever to seeing the applicants receive the more complete form, is that correct?

Mr. BUTTON. I am not the chief law enforcement officer of the State. We have a peculiar situation in Virginia. That is located within our Commonwealth's attorneys of the various counties and cities.

But as attorney general of the State, I have approved that form that has been sent out by the secretary of the electoral board suggesting this form.

Senator KENNEDY. And as borne out in that legal decision handed down by the Virginia court?

Mr. BUTTON. Yes, sir.

Senator KENNEDY. I apologize for the interruption, but it just seemed that that was on the point you had been making.

Mr. BUTTON. I am delighted you brought it out, sir.

Senator ERVIN. What court was it that decided that?

Mr. BUTTON. A U.S. district court located in Richmond.

Senator ERVIN. Has the case been tried on the merits yet?

Mr. BUTTON. No, sir.

Senator ERVIN. This was a preliminary injunction, in other words?

Mr. BUTTON. Right, sir.

Senator KENNEDY. Did the registrar take the position, when she brought in the form filled out, that there was no way to check whether she wrote it or whether somebody else did?

Mr. BUTTON. In all frankness, sir, I do not think it was filled out. I think she filled it out in his presence. It was a form that she prepared herself and brought in, and he did not accept it.

Senator ERVIN. The administration and the Attorney General construe that to be a literacy test, apparently, because they say Virginia is under this bill.

Mr. BUTTON. I understand that, sir. But I was saying to you, sir, that in my judgment it is not a literacy test.

Senator ERVIN. It is not the kind we have in North Carolina, anyway.

Mr. BUTTON. And we have no grandfather clause and no provisions for explaining anything, and so forth.

Senator HART. Mr. Attorney General, I did not realize, I was distracted when you replied to the previous question. You take the position that the Virginia law does not impose a literacy test?

Mr. BUTTON. I say to you, sir, in my judgment, the answer to those simple questions is not a literacy test. I understand Mr. Katzenbach has a different view.

Senator HART. Did not Mr. Kilpatrick—

Mr. BUTTON. Mr. Kilpatrick feels it was; yes, sir. I leave it to your judgment.

Senator ERVIN. You still feel you are entitled to have it litigated in the courts under such a procedure?

Mr. BUTTON. Possibly so, sir.

Senator ERVIN. And under this bill, you cannot litigate that.

Mr. BUTTON. I wanted to say also, sir, and I do not want to take up much time, because Mr. Gray wants to speak, I want to say the 1961 report on voting by the Civil Rights Commission said that there was no discrimination in Virginia on account of race or color. The same report, sir, called attention to three other States, which I shall not name, but I can if you wish me to, sir, in which they said there was discrimination. Virginia is caught by this bill. Those three other States are not caught, those three States in which they said there was discrimination.

Now, I want to call your attention to this, and there is a short extract from that report, referring to one of the counties Mr. Kilparick spoke about this morning, where there was a study of depth in Virginia.

Senator KENNEDY. Mr. Attorney General, just on the point before we leave it, on the question of whether there was a literacy test or not, as I understand it, he who applies or seeks to register in Virginia has to be able to interpret section 22 of the constitution of Virginia, promulgated in the 1902 convention, and reading in part as follows:

That unless physically unable he must make application to register in his own handwriting, without aid, suggestion, or memorandum, in the presence of the registration officer, stating therein his name, age, date, and place of birth, residence, and occupation at the time and for 1 year next preceding, and whether he has previously voted, and if so, the State, county, and precinct in which he voted last.

Mr. BUTTON. Exactly what I said to you, except there is no explanation of the section of the constitution.

Senator KENNEDY. You think there would be no language confusion in the "1 year next preceding"?

Mr. BUTTON. That would be where he has been the 1 year next preceding.

Senator KENNEDY. Would you agree with me that those words, "for 1 year next preceding" are clear and understandable? Do you think that is the same as saying the place of last employment?

Mr. BUTTON. No, sir. In Virginia, you have to be in Virginia for 1 year to be able to vote.

Senator KENNEDY. My only question of you, Mr. Attorney General, is the clarity of the language, the 1 year next preceding, I would think that that would, just giving that language to most people, could be confusing to some people.

Mr. BUTTON. It only means, sir, where did you live for 1 year next preceding where you are presently living.

Senator KENNEDY. Do you give the applicants that same guidance, or registrars?

Mr. BUTTON. I have never been a registrar, sir.

Senator KENNEDY. Thank you, sir. Excuse me.

Senator ERVIN. I would say that that is a term, where you have a fixed period of time, that term is used in statutes about 9 times out of 10, next preceding. If a person has not enough intelligence to understand that, I do not think he has any great contribution to make toward the Government of the Republic.

Mr. BURTON. Gentlemen, if I may proceed, I did want to read you this one short extract from that Civil Rights Commission report:

* * * Charles City County, Va., is the outstanding example of political freedom and participation by Negroes * * * Charles City has a Negro registrar, Negro clerks and, at voting time, Negro election judges. In 1952 a Negro won the race for county supervisor, and when he died in office in 1959, he was succeeded by another Negro. Four of the county democratic committee's 12 members are Negroes, and an active non-Protestant Negro organization, the Charles City County Civic Club, works to encourage Negroes to pay their poll taxes, register, and vote. White candidates place their records and platforms in person before Negro groups—further evidence that Charles City Negroes are considered politically important.

That is the particular reference I wanted to bring to your attention. That was made in 1961 by the Civil Rights Commission, sir, and I wanted this committee to know it.

There is one other thing only that I wish to say, gentlemen, to reiterate something Mr. Kilpatrick said this morning. He gave to you a brief, a very simple way that this matter could be reached, and I want to reiterate that there be a bill passed that would refer to every State and county and political subdivision in this country, equal and alike, without discrimination or arbitrary classifications, as to what falls within and without the bill.

If a definite number of people, 20 or more, in any political subdivision were to file a petition with the Federal court declaring or alleging that there has been discrimination against them in registering or voting, that would be tried immediately by the Federal court and, if found to be true, a Federal registrar to be appointed for that political subdivision who, in conjunction with the local registrar, would apply the local laws as to qualification, but see that it was done without discrimination as to race or color. That would be a very simple bill that would have no possible implications as to constitutionality, in my judgment.

Senator ERVIN. Do you believe that the case of *Coyle v. Smith*, 221 U.S. 559, lays down the doctrine that the Union of the United States is a Union of States equal in power and equal in dignity and authority, and that that invalidates this bill?

Mr. BURTON. Senator, I appeared before the House Judiciary Committee and made the statement that in my judgment this bill is unconstitutional. One of the members of the committee asked me if I had read Mr. Katzenbach's statement to the contrary, and I told him that I had not. He said, "If I give you a copy of that statement, will you answer it on the legal ground of whether or not it is unconstitutional?"

I am doing that, sir. That is in the course of preparation, which will be a legal response only to that question. If this committee would like a copy of that, I should be glad to furnish it.

Senator ERVIN. I would be glad to have a copy personally.

Is not the effect of this bill to suspend the power of six States, and 34 counties of North Carolina, to suspend their power to use the literacy test?

Mr. BURTON. I think the bill as written is unconstitutional in many respects, Senator. I did not want to go into detail.

Senator ERVIN. In other words, you do not believe that there is power under the Constitution—in other words, it is a matter of constitutional construction, and as a matter of constitutional construction,

does not the court hold that the Constitution must be so construed as to make all the provisions effective except in cases of irreconcilable conflict—where one is a substantive provision and is in irreconcilable conflict with another provision?

Mr. BURTON. Yes.

Senator ERVIN. This bill would suspend section 2 of article I of the Constitution, would it not, in certain localities, and even in the 66 of the counties of North Carolina?

Mr. BURTON. The bill has the effect of saying whether a State applies a literacy test on the basis of race and color. As I said, Virginia would be caught, where the Civil Rights Commission said there was no discrimination, and in other States where there was discrimination, they would not be caught.

Senator ERVIN. And North Carolina's 34 counties would be caught, even in the case where it is said there was no violation.

Just one other question. Senator Fong this morning asked Mr. Kilpatrick whether or not Virginia could not get out from under this bill by providing that illiterates could vote and abolishing this questionnaire that they have to answer. The qualifications in Virginia are embodied in the State constitution, are they not?

Mr. BURTON. Right, sir.

Senator ERVIN. And they could not possibly get out from under the bill until the legislature submitted a constitutional amendment to the people of Virginia and the people of Virginia approved it?

Mr. BURTON. There would have to be two sessions of the general assembly pass on it and then it would have to be voted on by the people, yes, sir.

Senator ERVIN. Even after that they could not get out from under this bill unless the Federal district court sitting in the District of Columbia would permit it, could they?

Mr. BURTON. Further than that, because the device was there in November 1964, I believe they would still be under the bill, sir.

Senator ERVIN (presiding). Thank you, sir.

(The complete statement of Mr. Burton follows:)

Mr. Chairman and members of the Judiciary Committee of the U.S. Senate, S. 1564 is among the most dangerous pieces of legislation ever offered in the Congress of the United States. I make this statement advisedly, for I earnestly believe it goes further than any step yet attempted to erode the basic concepts of constitutional government in which the individual States are acknowledged to be sovereign. The legislation is not only patently unconstitutional, but it is shockingly discriminatory.

Section 2, of S. 1564, provides that "no voting qualification or procedure shall be imposed or applied to deny or abridge the right to vote on account of race or color." Enactment of this section is fully justified by the inhibition of the 15th amendment to the Constitution of the United States.

Surely, no one will argue with the wisdom of that prohibition; yet, by some mental gymnastics not yet clearly determined, the authors of S. 1564 have reached the amazing conclusion that requiring a person to read or write his own name in registering to vote is a voting qualification which abridges the right in question on account of race or color. Apparently, such a requirement is considered in some States a "test or device" which abridges the right to vote on account of race or color. How, then, are we to determine the States in which such a test or device is deemed violative of the proscription of the 15th amendment?

It will be seen from the provisions of section 3 that this bill would apply to States that maintained on November 1, 1964, some "test or device" as a qualification for voting only (a) if less than 50 percent of the persons of voting age were registered on November 1, 1964, or (b) if less than 50 percent of such per-

sons voted in the presidential election of 1964. Take particular note that it does not apply equally to all States, even though there may be in effect a voter qualification test or device in a State to which the law does not apply far more stringent than that utilized in a State to which the legislation does apply.

At this point I wish to emphasize that Virginia does not utilize a literacy test as a qualification for registration or voting. However, a prospective voter is required to fill out in his own handwriting a form supplied by the registrar indicating the applicant's age, date, and place of birth, residence, and occupation at the time of registration and for 1 year next preceding, whether or not he has previously voted, and if so, the State, county, and precinct in which he last voted. Surely, this is a reasonable requirement for a State to impose upon prospective voters and it is a requirement which is utterly devoid of any racial connotation whatsoever. Yet, under this bill such a requirement could be construed by the Attorney General of the United States to constitute a test or device. In November 1964, only 41 percent of the voting age population of Virginia voted in the presidential election. In Alabama, 36 percent of the adults voted; Alaska, 48.7 percent; Georgia, 43.2 percent; Louisiana, 47.3 percent; Mississippi, 32.9 percent; South Carolina, 38 percent. Although less than half of the adults of Arkansas and Texas voted in that election, these States reportedly employ no "test or device" as defined in this legislation and would therefore be excluded from its provisions.

Although less than 50 percent of the adults voted in Virginia in 1964, this circumstance surely cannot be attributed to any discrimination in registering prospective voters, since more than 50 percent of the adults were registered at the time. Despite the fact that 1,311,023 adults (over 50 percent of the total adult population of 2,524,000) were eligible to vote in the 1964 presidential election, and despite the unprecedented efforts of both major political parties to encourage those persons to vote, only 1,042,287 eligible persons voted; 268,756 failed to exercise their franchise. Notwithstanding, under the test prescribed in this legislation, the State of Virginia will be penalized for the failure of those registered voters who did not take sufficient interest in the candidates offered for their consideration in 1964 to exercise their franchise.

The basic premise of this legislation thus fails; for, despite the absence of a "test or device" in States such as Arkansas and Texas, less than 50 percent of the adults voted in the last presidential election. On the other hand, the State of New York has a literacy test far more rigorous than that employed in some States but, because 63.2 percent of the adults in that State voted in the last election, New York is exempt from this punitive legislation.

This bill manifestly brings about the very evil it purports to cure; namely, the creation of separate and distinct standards of voter qualifications in all elections. No person with the slightest regard for the Constitution of the United States could conceivably read this legislation and fail to conclude that it abolishes all qualifications for voting within a minority group of States, while simultaneously permitting all other States to impose their own qualifications no matter how stringent they may be. This, gentlemen, is not only unconstitutional, it is discrimination of the rankest order—discrimination that has neither reasonable classification nor rational justification.

Section 2 of article I of the Constitution of the United States specifically provides that the electors in each State shall have the same qualifications requisite for electors of the most numerous branch of the State legislature. It has always been uniformly considered the right of the various States to set the qualifications for the electors of the most numerous branch of its State legislature. With the exception of the prohibitions against classifications based upon race or sex enunciated in the 15th and 19th amendments, no provision of the Constitution of the United States has to this date changed that fundamental principle. Indeed, the principle was expressly reaffirmed in the 17th amendment. And yet, if a State falls within the provisions of this bill or if, in the uncontrolled judgment of the Attorney General, Federal examiners are appointed, such examiners will then register and place on the list of those eligible to vote persons who may not be qualified under State law. In other words, the Federal Government will disregard the qualifications of the States and set up its own rules and regulations for persons who may register and vote in all elections—Federal, State, and local. This action on the part of the Federal Government would apply only to those States in which Federal examiners were appointed, either because those States were indicted under section 3, or because in his unfettered judgment the Attorney General thought the same necessary. This

would mean that in all other States the law applicable to the qualifications of electors would still be in force and govern; while in the small minority of States in which Federal examiners were appointed, this would not be true.

The Federal Government would thus apply its judgment as to qualifications of electors in certain States and not in others. This would be the most far-reaching denial of constitutional State power yet devised and the obliteration of the most fundamental rights of the States by their transfer to the Federal Government. In practical effect, the States so irrationally indicated and (though guiltless of racial discrimination) convicted without trial would no longer be sovereign entities but simply departments of the Federal Government.

Also, if examiners are to be appointed in some political subdivisions of the States, different rules as to registration would apply in these subdivisions having examiners and those which do not. In those subdivisions where no examiners were appointed, the laws of the State would still be effective.

If we are to assume this legislation is to stand or fall on the strength of the 15th amendment, we should look to the question of voter discrimination based on race or color. I can, of course, speak only for Virginia. The U.S. Commission on Civil Rights in its 1961 report on voting found no discrimination in Virginia on account of race or color. Indeed, there has been no report of any recognized agency or responsible individual which even suggests that discrimination exists in Virginia in the right to vote on account of race or color. Moreover, anyone who had the temerity to allege that Negroes are denied registration in Virginia because of their race could not sustain that allegation by proof and would be guilty of manifest and willful misstatement.

In the city of Richmond, where there is a large Negro population, 14,986 Negroes applied for registration in 1964 alone and 14,786 were duly registered. Only 200 applicants were rejected, and the applications on file in the registrar's office reveal that these 200 were rejected solely because they were unable to fill out the registration form which merely required insertion of the applicant's age, date and place of birth, residence and, occupation at the time of registration and for 1 year next preceding, whether or not he has previously voted, and if so, the State, county, and precinct in which he last voted. I repeat the information which a prospective voter is required to furnish under Virginia law to emphasize the classic simplicity and fundamental fairness of Virginia's registration requirements. I add the fact that under Virginia law registration is permanent and no annual registration or reregistration of any sort is required.

In Charles City County, Va., there is also a large Negro population which constitutes some 83 $\frac{3}{4}$ percent of the total population of that county. Commenting upon the lack of racial discrimination in the exercise of the franchise in this political subdivision of Virginia, the U.S. Commission on Civil Rights in its 1961 report on voting made the following statement:

"* * * Charles City County, Va., is the outstanding example (by comparison) of political freedom and participation by Negroes. * * * Charles City has a Negro registrar (a woman), Negro clerks and, at voting time, Negro election judges. In 1952 a Negro won the race for county supervisor, and when he died in office in 1959 he was succeeded by another Negro. Four of the county Democratic Committee's 12 members are Negroes, and an active nonpartisan Negro organization, the Charles City County Civic Club, works to encourage Negroes to pay their poll taxes, register, and vote. White candidates place their records, and platforms in person before Negro groups—further evidence that Charles City Negroes are considered politically important."

Richmond and Charles City County are typical of the State as a whole, and no person who has even attempted to inform himself can truthfully state that Negroes in Virginia have been subjected to discrimination in either registration or voting. Indeed, no accusation has been received from any quarter that any person of voting age in Virginia, whether white or Negro, has ever been denied the right to register or vote by imposition of a "test or device" based on race or color.

I have always entertained the view that the right to vote was just that—a personal right, not a governmentally imposed obligation. So far as I am aware, there has never heretofore been proposed a Federal law which would compel a State to see that registered persons actually voted, or to penalize registered voters for failure to exercise the franchise.

To insure that illiterates, felons, and other unqualified individuals do not vitiate the electorate, many States have imposed some form of voter qualifica-

tion. This power, exclusively one reserved and confirmed to the States, has heretofore been founded upon article I, section 2, of the Constitution of the United States. The propriety of the effective exercise of this power was clearly and conclusively stated by Vice Chairman Storey of the U.S. Commission on Civil Rights in the 1961 report on voting in the following declaration:

"Many States have voting requirements more extensive than age or length of residence, incarceration, or felony convictions. These qualifications, having nothing to do with race, religion, or national origin, are an important element in preserving the sanctity of the ballot. They are specific disqualifications which are felt justifiable for the good of the State. Disqualifications of persons whose mental condition makes it impossible for them competently to exercise the discrimination necessary in voting has long been accepted. Many States disqualify paupers supported by municipal or county officials on the theory that these people are too easily exploitable by such officials for their own purposes. The security and purity of the ballot can be destroyed by permitting illiterates to vote. And as the English language is still the official language of the United States, there is good justification for States requiring that voters have at least a rudimentary knowledge of this language."

Apparently Congress is now to substitute its own judgment for that of the individual States regarding voter qualifications, not only in Federal elections but in State and local elections as well. Thus, the States affected by this legislation will be compelled to extend the franchise indiscriminately to all, or to anyone deemed to be qualified in the unlimited discretion of a Federal examiner.

Finally, with due respect, I offer this admonition: This bill is merely one step in a scheme for ultimate Federal control of the conduct of all State and local elections, even to the extent of federally appointed election officials in elections involving public office in every State, county, city, and town in the Nation, as well as elections upon such limited questions as creating local debt or imposing local taxes. Today, it is a select minority of States which Congress is so gleefully and impetuously grinding under its heel. Tomorrow, under other circumstances, your own States feel the weight of this tyranny, for surely there is no man here so blind as to be unable to see that the criteria designed today to eliminate the reasonable voter qualifications in Virginia can as easily be redesigned tomorrow to abolish voter qualifications in New York, California, or any other State.

Individually, Virginia has no fear of the spotlight being turned on its electoral process. We stand justly proud of our system and the public servants who administer it. Any citizen who feels that his right to vote has been abridged or affected in any way, either by the system itself or through its administration, has ample remedy under Virginia law to redress this condition without reliance upon Federal legislation such as that proposed in S. 1564. But, as already pointed out and everywhere conceded, no remedy is required under Virginia law, for no wrong exists to be corrected.

In its present form S. 1564 is an obvious sham, and by enacting it the Congress of the United States will become partners with the administration in an act of unparalleled political cynicism. As written, the bill is a sham because—though ostensibly and ostentatiously offered for the purpose of eliminating racial discrimination in the electoral process—it contains an arbitrary application formula deliberately designed to include within its terms certain States which both the administration and Congress know are guiltless of racial discrimination in this field, while at the same time deliberately excluding from its scope other States in which racial discrimination is known by the administration and Congress to exist. Though its professed purpose is the termination of racial discrimination in the exercise of the right to vote, the bill manifestly does not even attempt to achieve this salutary goal on an impartial, uniform, nationwide basis as it should—and so easily could—do, but only snipes at the problem piecemeal in those few States which the administration believes may be insulted and harassed with impunity by the rest of the Nation.

Is it possible that the Congress of the United States can be so stampeded by external events that it has neither the time nor the fortitude to be either fair or effective in shaping its legislation? Both fairness and effectiveness can easily be achieved by enactment of a bill which would apply uniformly to every political subdivision in the country where racial discrimination exists and thus single out no particular State or people for the special opprobrium which S. 1564 now entails.

By enacting this legislation in its present form Congress will seriously undermine the edifice of constitutional government in this country, under which the founders of the Union sought to protect and advance the cause of liberty primarily by distributing governmental power between the Nation and the States, each supreme within its sphere, thus forming an indestructible union of indestructible States. Sober reflection, objective analysis and dispassionate deliberation should characterize the congressional approach to legislation such as this, for the rights of no citizen can be guaranteed tomorrow if the Constitution is rent assunder in an impulsive, misguided, and illegal effort to secure the rights of certain citizens today. Wrong means employed by good men today are inevitably utilized to justify the act of a tyrant tomorrow. The Members of Congress should think well before evading the Constitution we have all sworn to uphold. Someday we may be in sore need of its protection.

(The following statement of Mr. Button which was filed with Subcommittee No. 5 of the Committee of the Judiciary of the House of Representatives is included in the record at the request of Senator Ervin:)

COMMONWEALTH OF VIRGINIA,
Richmond, April 7, 1965.

HON. SAM J. ERVIN, JR.,
Congress of the United States,
Senate Office Building, Washington, D.C.

MY DEAR SENATOR ERVIN: I enclose herewith copy of the statement filed with Subcommittee No. 5 of the Committee on the Judiciary of the House of Representatives. This statement was filed at the request of a member of the subcommittee at the time I appeared before that committee on March 29, 1965.

A copy of this statement is sent to you in accordance with your request made at the time I appeared before the Senate Committee on the Judiciary on April 1, 1965.

Sincerely yours,

ROBERT Y. BUTTON, Attorney General.

THE CONSTITUTIONALITY OF THE VOTING RIGHTS ACT OF 1965—H.R. 6400—A
RESPONSE TO THE ATTORNEY GENERAL OF THE UNITED STATES

On March 29, 1965, in my capacity as attorney general of Virginia, I testified before Subcommittee No. 5 of the Committee on the Judiciary of the House of Representatives of the United States in opposition to H.R. 6400, entitled the "Voting Rights Act of 1965." On that occasion, I began my testimony with the statement that the proposed bill was " * * * among the most dangerous pieces of legislation ever offered in the Congress of the United States. I make this statement advisedly, for I earnestly believe it goes further than any step yet attempted to erode the basic concepts of constitutional government in which the individual States are acknowledged to be sovereign. The legislation is not only patently unconstitutional, but it is shockingly discriminatory."

During the course of the hearings on that date, my attention was directed by a member of the subcommittee to the following observation made by the Attorney General of the United States while testifying on the same bill before the House Judiciary Committee on March 18, 1965:

"I have shown why this legislation is necessary and have explained how it would work. It remains to determine whether it is constitutional. The answer is clear; the proposal is constitutional."

In light of this obvious conflict of opinion concerning the constitutionality of H.R. 6400, I was invited by the subcommittee to submit a more elaborate expression of my views on this subject in the form of a response to those previously announced by the Attorney General of the United States. I accepted this invitation, and I wish now to express my appreciation to the members of the subcommittee for this opportunity to detail my position on this aspect of the legislation under consideration.

In essence, H.R. 6400 provides that no person shall be denied the right to vote in any election (Federal, State, or local) because of his failure to comply with any voter qualification test established by State law, in any State or political subdivision thereof (1) which maintained a voter qualification test on November 1, 1964, and (2) in which less than 50 percent of the resident persons of

voting age were registered on November 1, 1964, or in which less than 50 percent of the resident persons of voting age voted in the presidential election of November 1964. In effect, H.R. 6400 would abolish any voter qualification test (including racially nondiscriminatory tests) in certain States only; i.e., those States falling within the ambit of one or the other of the two 50-percent formulas mentioned above.

The only provision of the Constitution of the United States upon which its proponents attempt to justify enactment of the legislation in question is the 15th amendment. In its entirety, that amendment prescribes:

"Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

"Section 2. The Congress shall have power to enforce this article by appropriate legislation."

The Attorney General of the United States asserts that H.R. 6400 constitutes "appropriate" legislation under section 2 of the 15th amendment. I submit, however, that H.R. 6400 is constitutionally invalid because (1) in its direct operation and effect under the 50 percentum formulas, the bill arbitrarily and unjustifiably includes within its terms States which are demonstrably free of any racial discrimination in the establishment or administration of their electoral processes and (2) in its direct operation and effect, the bill infringes the constitutional power of the individual States of the Union to impose such racially nondiscriminatory qualifications upon the exercise of the right to vote as each State may select. I shall discuss these two fundamental constitutional objections to the bill seriatim.

In considering the first stated objection to the constitutionality of H.R. 6400, it is well settled, as the Attorney General points out citing *Katzbach v. McClung* (379 U.S. 294), that Congress must have a "rational basis" for the findings upon which its legislation is predicated. It must be noted, however, that the Attorney General's attempt to establish a "valid factual premise" for congressional action with respect to voter discrimination in Virginia is completely refuted by the findings of the U.S. Civil Rights Commission. In its 1961 report on voting, the Commission declared:

"The absence of complaints to the Commission, actions by the Department of Justice, private litigation, or other indications of discrimination, have led the Commission to conclude that, with the possible exception of a deterrent effect of the poll tax—which does not appear generally to be discriminatory upon the basis of race or color—Negroes now appear to encounter no significant racially motivated impediments to voting in 4 of the 12 Southern States; Arkansas, Oklahoma, Texas, and Virginia" (vol. 1, p. 22).

"In three States—Louisiana (where there is substantial discrimination), Florida (where there is some), and Virginia (where there appears to be none)—official statistics are compiled on the State level by county and by race" (vol. 1, p. 102).

As the Supreme Court has repeatedly pointed out, a statute, valid on its face, may be assailed by proof of facts demonstrating that the statute as applied to a particular class is without support in reason. (See, *United States v. Carolene Products Company*, 304 U.S. 144.) In light of the findings of the U.S. Civil Rights Commission summarized above, it is unarguably apparent that no racial discrimination exists in Virginia with respect to the right to vote. This circumstance completely undermines the indispensable factual foundation upon which H.R. 6400 is based. The power of Congress to enforce the guarantee of the 15th amendment is specifically limited to the enactment of "appropriate" legislation for this purpose; yet it is manifest that the 50 percent formulas which would activate the proposed legislation operate to include within the ambit of the bill States in which no racially motivated voter discrimination exists. Clearly, Congress may not—under the guise of enforcing the 15th amendment prohibition against denial of the right to vote on account of race or color—enact legislation which would suspend the electoral laws of a State in which racial discrimination in the exercise of the right to vote is known by Congress, as a matter of public record, to be nonexistent. Legislation having such an effect is clearly without reasonable classification or rational justification, amounts to no more than a mere arbitrary fiat and cannot constitute appropriate legislation under the 15th amendment.

Consideration of the 2d stated objection to the constitutionality of H.R. 6400 begins with the premise that the right to prescribe the qualification of

electors is one constitutionally vested exclusively within the province of the individual States, subject only to the limitations contained in the Federal Constitution forbidding qualifications based upon race (15th amendment), sex (19th amendment), and the payment of a poll tax in Federal elections (24th amendment). Thus, article I, section 2, of the Constitution of the United States and the 17th amendment provide that electors for the House of Representatives and Senate, respectively, shall have the qualifications requisite for electors of the most numerous branch of each State legislature. Under these provisions, the qualifications of electors in congressional elections must be those qualifications established by each State for electors of the most numerous branch of the State legislature. Further in this connection, the Supreme Court of the United States has repeatedly declared that a State is free to conduct its elections and limit its electorate as it may deem wise, except as its actions may be affected by the prohibitions of the Federal Constitution, and that the power of Congress to legislate at all the subject of racial discrimination in voting rests upon the 15th amendment and extends only to the prevention by appropriate legislation of the discrimination forbidden by that amendment.

Decisions of the U.S. Supreme Court since ratification of the 15th amendment dispel in conclusive fashion any doubt concerning the validity of this fundamental premise. In 1876 (*United States v. Reese*, 92 U.S. 214), the Supreme Court declared:

"The 15th amendment does not confer the right of suffrage upon anyone. It prevents the States, or the United States, however, from giving preference, in this particular, to one citizen of the United States over another, on account of race, color, or previous condition of servitude. * * * If citizens of one race having certain qualifications are permitted by law to vote, those of another having the same qualifications must be * * *. *The power of Congress to legislate at all upon the subject of voting at State elections rests upon this amendment.*" [Italic supplied.]

Moreover, in 1959 (*Lassiter v. Northampton County Board of Elections*, 360 U.S. 45), the Court stated:

"*The States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised. * * * So while the right of suffrage is established and guaranteed by the Constitution * * * it is subject to the imposition of State standards which are not discriminatory and which do not contravene any restriction that Congress, acting pursuant to its constitutional powers, has imposed. * * * While section 2 of the 14th amendment, which provides for apportionment of representatives among the States according to their respective numbers counting the whole number of persons in each State (except Indians not taxed), speaks of 'the right to vote,' the right protected 'refers to the right to vote as established by the laws and constitution of the State.'*" [Italic supplied.]

Finally, on March 8 of this very year (*Carrington v. Rash*, — U.S. —), the Court confirmed:

"*There can be no doubt either of the historic function of the States to establish, on a nondiscriminatory basis, and in accordance with the Constitution, other qualifications for the exercise of the franchise. Indeed, 'the States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised. * * * In other words, the privilege to vote in a State is within the jurisdiction of the State itself, to be exercised as the State may direct, and upon such terms as to it may seem proper, provided, of course, no discrimination is made between individuals in violations of the Federal Constitution.'*" [Italic supplied.]

In light of these decisions, it is manifest that for almost a century the Supreme Court of the United States has consistently and repeatedly proclaimed the power of each State under the Federal Constitution to establish racially nondiscriminatory criteria governing the exercise of the elective franchise of its citizens. The language in which this fundamental power of the individual States has been declared, reaffirmed, and protected consists of such plain English words that he who runs may read and the ingenuity of men cannot evade them. The prescription of racially nondiscriminatory qualifications upon the right to vote is the exercise of a power vested in each State by the Constitution of the United States. If this power rests with the States under the Constitution—as is unarguably true—then its exercise may not be interdicted by the Congress or any department of the Federal Government, under the 15th amendment or any other provision of the Constitution. If the constitutional powers of the States could be

thus manipulated out of existence by the legislative action of Congress, the guarantees of our Constitution are illusory indeed.

Let me attempt to clarify this proposition and emphasize its validity by reference to an analogy with which, perhaps, not even the Attorney General of the United States will disagree. Section 2 of the 14th amendment authorizes Congress to reduce the basis of representation of States in the House of Representatives whenever the right to vote in a State is denied or abridged except upon stated grounds. By contrast, the right of a State to equal representation in the Senate of the United States by two Senators, each of whom shall have one vote, is a right guaranteed to each State without qualification by article V of the Constitution. If the Congress of the United States—purporting to act under the 15th amendment—should enact a law diminishing Senate representation in those States in which the right to vote has been denied or abridged upon the ground of race, would such a law be constitutional? Manifestly not, and I do not believe that even the Attorney General of the United States would have the temerity to suggest that it would be. In enacting appropriate legislation under the 15th amendment, it simply does not lie within the power of Congress to violate other provisions of the Federal Constitution which expressly guarantee certain rights to, and confer certain powers upon, the States or other independent coordinate branches of the Federal Government.

Yet the right to prescribe racially nondiscriminatory voting qualifications is one no less vested in the States by the Federal Constitution than the right to equal representation in the Senate. If the latter right of the States cannot be infringed by Congress under the 15th amendment, the former right equally cannot be.

Let me emphasize at this point that I do not make the broad (indeed, too broad) assertion that each State has the power to prescribe any voting qualifications it may see fit. It is the power to prescribe racially nondiscriminatory qualifications which each State constitutionally possesses, and when a State establishes such nondiscriminatory qualifications, it exercises a constitutionally protected power with which no branch of the Federal Government may permissibly interfere.

Just such a situation exists in my State. Under Virginia law, a prospective voter is required to fill out in his own handwriting a form indicating the applicant's age, date and place of birth, residence, and occupation at the time of registration and for 1 year next preceding, whether or not he has previously voted and, if so, the State, county, and precinct in which he last voted. These requirements are not only reasonable but are utterly devoid of any racial connotation whatever, and their imposition neither denies nor abridges anyone's right to vote because of race or color. Under the Constitution of the United States, Virginia has the power to impose these nondiscriminatory voter qualifications upon its citizens, and the Congress has no authority whatever to suspend them. If these qualifications were discriminatory, or if they were discriminatorily administered, then—and only then—would these circumstances provide an area in which Congress, under the 15th amendment, could legislate. However, if neither of these circumstances exists—as is concededly the case in Virginia—no enactment of Congress can vary them in the slightest degree. Congress cannot substitute its own voting standards for the nondiscriminatory voting qualifications prescribed by the State without infringing the constitutionally established and judicially protected power of the State in this field.

During the course of his testimony before the House Judiciary Committee on March 18, 1965, the Attorney General of the United States made reference to the following observation of the late Mr. Justice Frankfurter, speaking for the Court in *Gomillion v. Lightfoot* (346 U.S. 339, 347), a 15th amendment case:

"When a State exercises power wholly within the domain of State interest, it is insulated from Federal judicial review. But such insulation is not carried over when State power is used as an instrument for circumventing a federally protected right."

Precisely so. And when a State establishes nondiscriminatory voting qualifications, it exercises a power wholly within the domain of the State and is insulated not only from Federal judicial review but from Federal legislative interference. It adds nothing to emphasize that such insulation is not available when State power is used as an instrument for circumventing a federally protected right, for when a States' voting standards are, in fact, nondiscriminatory, they cannot be an instrument for such purpose nor come within the reach of congressional power.

The Attorney General of the United States also referred to certain observations of Chief Justice John Marshall in the historic cases of *Gibbons v. Ogden* (9 Wheat. 1), and *McCullough v. Maryland* (4 Wheat. 316), for alleged support of the power of Congress to enact H.R. 6400. In this connection, he quoted the following classic utterances of Marshall in those cases:

"This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, *other than are prescribed in the Constitution*" (9 Wheat. 196). [Italic supplied.]

"Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, *which are not prohibited, but consistent with the letter and spirit of the Constitution*, are constitutional" (4 Wheat. 421). [Italic supplied.]

In light of the phrases of the quotations which I have italicized above, it is manifest that these declarations lend no support to the Attorney General's position. On the contrary, the great Chief Justice was abundantly careful, on both occasions, to point out that congressional power was subject to the limitations "prescribed in the Constitution" and that the only means properly available for the exercise of congressional power are those "which are not prohibited * * *". However, as we have seen, the power of Congress to deal with State-prescribed voter qualifications is severely limited by the Constitution and the suspension by Congress of the racially nondiscriminatory qualifications of a State is clearly prohibited.

Equally irrelevant and misleading are the Attorney General's reference to *Ex Parte Siebold* (100 U.S. 371), and his statement that in the cited case the Supreme Court "sustained a system of Federal supervisors for registration and voting not dissimilar to the system proposed here." Not only was the legislation under review in *Siebold* limited to Federal elections, but it did not even purport to interfere with State laws prescribing voter qualifications. It is thus apparent that the legislation validated in *Siebold* was not even remotely similar to the legislation currently under consideration by Congress.

I lay no claim to reputation as an authority on the subject of constitutional law, and certainly I have no talent for predicting the future course of Supreme Court decisions on the basis of existing precedent. I do believe, however, as Mr. Justice Harlan made clear in his address dedicating the Bill of Rights Room in New York City on August 9, 1964, that the framers of the Constitution " * * * staked their faith that liberty would prosper in the new nation not primarily upon declarations of individual rights but upon the kind of government the Union was to have. And they determined that in a government of divided powers lay the best promise for realizing the free society it was their object to achieve." [Italic supplied.]

One aspect of this governmental edifice which the framers sought to erect, and which H.R. 6400 would manifestly subvert, was the distribution of power between the Nation and the States, each supreme within its sphere, thus forming an indestructible Union of indestructible States. I speak today for the preservation of this governmental ideal and for the preservation of the right of every citizen to vote, without regard to race or color, within the framework of this ideal and in a manner consistent with the letter and spirit of the Constitution.

Senator ERVIN. Mr. Gray, you are the former attorney general of Virginia, are you not?

STATEMENT OF FREDERICK T. GRAY, RICHMOND, VA.

Mr. GRAY. Senator Ervin.

Senator ERVIN. Have you been a member of the great General Assembly of Virginia?

Mr. GRAY. I am not related by birth or wealth to the Senator.

Senator ERVIN. I withdraw the question, because one time they called a character witness to the stand down in the North Carolina court presided over by a good friend of mine, Judge Harlin Johnston. The lawyer asked this witness, "Are you a member of the State legislature?"

Judge Johnston said, "What are you trying to do, impeach your own witness?"

We are delighted to have you here. We shall be glad to hear you. Mr. GRAY. Gentlemen, in his statement before the House subcommittee on March 18, Attorney General Katzenbach said, and I quote:

In our system of government, there is no right more central and no right more precious than the right to vote.

He further quoted from President Kennedy, saying:

The right to vote in a free American election is the most powerful and precious right in the world—and it must not be denied on the grounds of race or color.

Now, I cite these statements by the Attorney General, not to criticize or condemn, but to illustrate that I have no quarrel with his announced purpose. I agree completely with both of these statements.

I did not come here to champion the cause of any race or any religion, but I must confess to you that I do come to champion one form of discrimination. I ask you gentlemen to permit the States to discriminate in favor of the literate.

We have had a great deal of discussion here, departing from what I have written, about what is or what is not a literacy test, and we may have, I think, gotten a little confusion. Certainly, as far as anyone from Virginia that I know of is concerned, there is no question about the fact that under this bill, the form for registration which is now in use in Virginia would be a literacy test under this bill, because in order to complete this test a person must be able to read what is on the form, which is the information which has been referred to—name, age, place of residence, occupation, and where you resided for the preceding year—and must be able to answer those questions in his own handwriting. Now, that requires a person to demonstrate his ability to read and write, and therefore, under this bill, it would be a literacy test. But it is not the type of literacy test which has been used throughout the years, we are told, and certainly we must concede have been used in many places in order to discriminate against the voting of certain persons.

Last fall we elected a President.

Senator ERVIN. Mr. Gray, on this point, were you here this morning when I suggested an amendment that could be made in the section of the bill defining test or device?

Mr. GRAY. Yes, Senator.

Senator ERVIN. That would take Virginia out from under the statute, would it not? In other words, if we changed that period to a comma and said, "which is designed"—

Mr. GRAY. Yes, Senator. I think it certainly would, but I would suggest, sir, that I can imagine a great deal of difficulty with your colleagues in trying to put any fuzzy type language in as to a test which is designed to do certain things, because this is a matter of interpretation. But I certainly think you would do no violence to the intent of this law.

If the intent of this law is as it is announced, to prevent discrimination on the basis of race, if that is your intention, certainly you can draw perfect language in section 3(a) which would say what I have just said back there, and I do not think this is a work of art, but something along these lines, "provided, however, that a State or political subdivision * * * that a person be required to fill out in his own

handwriting an application in which he is required to fill in appropriately labeled blanks with his name, age, place of residence, occupation, and place of residence for the past year, and whether or not he has previously voted and if so, where, shall not be regarded as a test."

Senator ERVIN. I would favor that as it lets Virginia out, which ought not to be under this bill. I would also favor my amendment as letting North Carolina out, which also ought not to be under this bill.

Senator ERVIN. That is very good language.

Mr. GRAY. I would just suggest if you try to put in language that a test designed for a certain purpose shall not be illegal, you get into a question of interpretation of what it is designed for, whereas if you say to the States, if this is constitutional legislation and you are determined to spell out, certainly the definition of a test under this bill should be clarified. As this bill now stands, you cannot require a person to understand any matter. A test is anything which requires a person to demonstrate his ability to understand any matter.

So taken literally, an idiot would have to be permitted to vote because you cannot even make him demonstrate his ability to understand a question, "What is your name," if you take section 3 literally.

Last fall, we elected a President, and one of the words most often heard during the campaign was "trigger-happy." Time and time again, the American people were asked to consider carefully the qualifications of the men who aspired to place their finger on the atomic trigger. We were reminded of the fact that the fate of civilization could well depend upon our choice.

Theoretically, one vote could elect the President of this Nation, one vote in the hands of one man. In the atomic pressure cooker in which we live, we have the right, indeed we have the duty, to see to it that that one vote is in the hands of one who is literate.

Now, I did not come here to deny the obvious. It is clear for all who are willing to see that in some instances, literacy tests have been used to effectuate racial discrimination at the registration table. But to outlaw all literacy tests for that reason is like outlawing motherhood because some children may grow up to be murderers.

In his statement to the House subcommittee, the Attorney General of the United States recognized the existence of the very objection which I now make. He stated:

One may, I suppose, grant the constitutionality of the remedy proposed in this bill, but nevertheless, oppose it on the ground that it places the ballot in the hands of the illiterate. On this theory, the remedy for existing discrimination would be to guarantee the fair administration of literary tests rather than to abolish them. I suggest that this alternative is unrealistic.

Senator ERVIN. If you are going to abolish everything that has been abused, you would have to abolish sex, would you not?

Mr. GRAY. I take the fifth on that, Senator, and say to you that I have heard tell that that is true.

Let me quickly note that I oppose the bill for the reasons stated by the Attorney General. It places the ballot in the hands of the illiterate, and I also hold it to be unconstitutional for the very reason which he perhaps inadvertently revealed in this quoted statement, when he said the bill abolishes the literacy test.

I agree that the right to vote is precious. Indeed, I feel that I must regard the right to vote as being more precious than does the Attorney General, because I regard your vote and my vote as being so precious that I would not permit its effect to be nullified by the vote of an illiterate.

Now, why is the alternative which is suggested by Attorney General Katzenbach unrealistic? He says the alternative is the fair administration of a literacy test. Is that unrealistic? Is the Attorney General saying that the literacy test is not fairly applied in the State of New York, and if so, why is the State of New York not embraced within this bill's provisions?

On the other hand, if the literacy test is fairly applied in New York, then why is it unrealistic to think that such is possible in any other State?

I had the pleasure of being present at the hearings before your subcommittee, Senator, on Senate bill 2750 in May of 1962. I believe it was in this very room. At that time, Attorney General Kennedy testified. I can recall that in answer to many of your questions, he replied to you, "Yes, Senator, but in Mississippi there are men with Ph. D. degrees who are unable to pass a literacy test."

Attorney General Kennedy was pointing his finger at the problem—not the literacy test but the administration of a literacy test.

I ask you, do you believe that there is any degree holder or even a child with a fourth or fifth grade education who could not fill out the simple form which is required by Virginia—that is, give his name, age, place of residence, and so forth?

And yet, because this form must be filled in by the applicant, it is obvious that the Attorney General would have no alternative under section 6(b) of this bill but to look at the definition in the word, "test," or "device," under section 3(b) and declare that Virginia is under the bill, that it does have a test.

In answer to a question from the chairman of the House subcommittee—

Senator KENNEDY. Mr. Chairman, could I ask at this point, since we are talking about the tests which are used in Virginia, that we have included at this point the two different forms which Virginia does use and which are discretionary, as I understand it, on the part of the registrar, which form they give to an applicant? Could we include that in the record at this time?

Senator ERVIN. It will be all right if he has them.

Mr. GRAY. I do not have the forms, Senator, but we shall be glad to provide them. We shall certainly be glad to do so.

Senator ERVIN. Let the record show that the forms will be included in the record at this point. I assume that Attorney General Button can supply them to the committee.

Mr. BUTTON. I should be glad to, Senator. I do not have them with me.

Mr. GRAY. I was about to suggest, Senator, that unless the Senate does intend this bill to outlaw such a form as is used by Virginia, then the language of the bill should be amended.

The last statement which I quoted from the Attorney General review that in his opinion, the bill does place the ballot in the hands of the illiterate. It is undeniable, then, that it does operate to bring

about the denial of equal protection of the law as between citizens of different States and even political subdivisions, different political subdivisions within the same State. As I understand the situation in your State, Senator Ervin, for example, in some counties—there are 34 counties, as I understand it, that would fall under the provisions of the bill. In that case, in 34 counties in your State, illiterates would be permitted to qualify before a Federal registrar, whereas in all of the other counties, they would be required to demonstrate their literacy under your literacy test. So that within the State of North Carolina, citizens would not have equal protection of the law. One who is totally illiterate in Virginia would be permitted to qualify, while one with a far greater education would be denied the right to vote under the literacy test of New York.

Only 2 years ago, those same people who advocate the outlawing of literacy tests today were crying out for national uniformity under the provisions of Senate bill 2750, where a sixth-grade education was set forth as the educational norm or the standard of the bill.

This bill has been characterized here today as unconstitutional, and I would suggest to the committee that in one of the landmark decisions in a long line of school desegregation cases, the Supreme Court of the United States has said that the frustration and circumvention of the Constitution cannot prevail whether the device used be ingenious or ingenuous. I shall not seek to select the adjective which should be applied to Senate bill 1564, but whichever selected, it is clear that this bill constitutes a clear device for the frustration and circumvention of the right of the States to determine voter qualifications.

In another of the school cases, the Court, after observing that it had been previously held that its decisions are the Constitution, admonished that all who had sworn to uphold the Constitution have sworn to uphold the decisions of the Court.

We have been told time and time again from the floor of the Congress and from public forums across the land that the decisions of the Supreme Court are the supreme law of the land and must be obeyed. The same ardent advocates of the Court today suggest this bill in spite of the fact that that same Court in 1959, in the case of *Lassiter v. The Board of Supervisors*, and speaking unanimously again through Mr. Justice Douglas, upheld the literacy test for voting prescribed by North Carolina, and said, among other things:

In our society * * * a State might conclude that only those who are literate should exercise the franchise.

As far back as 1884, the Court has adhered to the same rule. If the decisions of the Supreme Court are indeed the Constitution, then the gentlemen of the Senate are all sworn to uphold the right of North Carolina and of every other State to have and to enforce a literacy test.

It is perfectly clear under the Constitution of the United States that the right is preserved to the States to fix the qualifications for voting. In discussing this power, Alexander Hamilton, who was hardly a States righter, said:

But this forms no part of the power to be conferred upon the national government. Its authority would be expressly restricted to the regulation of the times, the places, and the manner of elections. The qualifications of the persons who may choose or be chosen, as has been remarked on other occasions, are defined and fixed in the Constitution and are unalterable by the national legislature.

In the case of *Guinn v. United States*—that has already been referred to today and I shall not take the time of the committee to read a quotation from that case in which the validity of a literacy test was upheld.

The Attorney General of the United States suggests that under the 15th amendment, Congress may adopt this bill as "appropriate legislation," but he is far too good a lawyer not to recognize the distinction between a law which is unconstitutional on its face and one which is unconstitutional because of its method of administration. If a law is unconstitutional on its face, the law must be abolished; that is the appropriate remedy. But if the law is constitutional but being given unconstitutional application, then the appropriate remedy is to enjoin the improper action under the valid law. Appropriate legislation for the case made by the Attorney General would be the legislation which he calls unrealistic—legislation to guarantee that the standards adopted by the States are fairly and uniformly applied.

Let me illustrate. Suppose that John Doe, in any one of our States, is unregistered and desires to register. Under this bill, if he happens to live in a State which has a literacy test and in which less than 50 percent of the people are registered or did not vote last November, he has a remedy. But if he happens to live in some other State which does not fall under the provisions of this bill, he has no remedy regardless of how much discrimination may be exerted against him to prevent him from registering.

Why should it be unrealistic to require a man to apply first to the registrar in his State? Those who have sought to spotlight this matter and bring national publicity and public opinion to bear on this bill walked all the way from Selma to Montgomery. It is not too much to require those who would exercise the privileges to vote to ride down to the State registrar's office. If he is unable to qualify before the State registrar, if he feels that he has been discriminated against, that the State registrar has refused him because of his race or if the official frustrates his efforts or hampers or delays him, then let him go to the Federal officer or the Federal court and let the Federal officer or the Federal court apply the same test.

If in Virginia, for example, if a man were to apply to register and be handed this simple form and think that he had successfully completed it but was told he would not be registered, let him go to a Federal officer and let the Federal officer administer that form to him.

Senator KENNEDY. Which simple form are you talking about?

Mr. GRAY. Either.

Senator KENNEDY. Because I have before me the two forms which are, as I understand it, used for the application for registration. As the former Attorney General, I know this is at some distance, but could I ask whether you might just take a look and identify, see if those are the type of forms which are used and given to applicants in Virginia?

Mr. GRAY. Senator, I am not familiar with the forms, have never had any occasion to look at the forms. I would assume these are the forms, but I do not know.

Senator KENNEDY. May I, for purposes of identification ask the attorney general of the State of Virginia?

What was his comment?

Mr. GRAY. He indicated that these are the forms, yes, sir.

Senator ERVIN. He identified them.

That will be printed in the record at this point.

(The forms referred to follow.)

APPLICATION FOR REGISTRATION

NOTE: Section 20 of the Constitution of Virginia provides who may register, and expressly directs that in the written application to register the applicant shall give certain information. Below are set forth such parts of Section 20 as concern the application.

Who May Register. Every citizen of the United States, having the qualifications of age and residence required in Section Eighteen, shall be entitled to register, provided:

. he make application to register in his own handwriting, without aid, suggestion, or memorandum, in the presence of the registration officer, stating therein his name, age, date and place of birth, residence and occupation at the time and for one year next preceding, and whether he has previously voted, and if so, the state, county, and precinct in which he voted last.

NAME: _____ AGE: _____

DATE OF BIRTH: _____ PLACE OF BIRTH: _____

ADDRESS: _____

OCCUPATION: _____

I HAVE LIVED IN VIRGINIA _____ YEARS.

I HAVE LIVED IN DANVILLE _____ YEARS.

I HAVE LIVED IN THE _____ WARD _____ YEARS.

HAVE YOU VOTED BEFORE? _____

IF SO, IN WHAT STATE: _____

Date

Signature of Applicant

APPLICATION FOR REGISTRATION

" he make application to register in his own handwriting, without aid, suggestion, or memorandum, in the presence of the registration officer, stating therein his name, age, date and place of birth, residence and occupation at the time and for one year next preceding, and whether he has previously voted, and if so, the state, county, and precinct in which he voted last;"

Signature of Applicant

Senator KENNEDY. As I understand it, the registrar has, under the laws of Virginia, an opportunity or the discretion, based on the 1960 law, as to the application form that could be used. The law says "on a form which may be provided by the registration officer."

As I understand it, the registration officer can either hand an applicant that form there, which is the blank form, or can hand the applicant this form, which has outlined in detail the requirements as specified under section 20 of the constitution of Virginia.

Mr. GRAY. That is my understanding, yes.

Senator KENNEDY. This is a discretionary factor which is given to the registrar, is that your understanding of the law of Virginia?

Mr. GRAY. Yes, sir.

Senator KENNEDY. So on the one hand, if the applicant is given this application and he is charged—as I understand it, to fill in the 10 lines which are designated here, the 10 requirements for a successful application. Is that your understanding?

Mr. GRAY. I do not know the number, Senator. But if you say there are 10, I assume that you are correct in the count. I do not have a form in my hand.

Senator KENNEDY. Well, do you think that one form would be easier to fill out than another?

Mr. GRAY. Yes, sir.

Senator KENNEDY. Which form would you think would be the easier to fill out?

Mr. GRAY. I would certainly think, Senator, and I suggested language at the beginning of my statement, that if you are to amend section 3, you would, in the manner I have suggested, you would say a requirement that he fill out a blank in which the information is requested on appropriately labeled lines so that the form you have in your left hand, which has the lines labeled, "name," and you are obviously to fill in your name, would obviously be simpler than the one in your right hand.

Senator KENNEDY. Would you say it is a matter of literacy whether an individual could read this section 20 of the constitution and correctly fill that out?

Mr. GRAY. I said in the beginning, there is no question that either one of those forms is a matter of literacy. There is no question at all that they are both, under this law would be literacy tests.

Senator KENNEDY. And to the best of your understanding, the question of whether one form or the other is given to an applicant in Virginia is not based on the question of race?

Mr. GRAY. Senator, to the best of my knowledge, it is not. If it is, I think it is a discriminatory action which could not sustain a court attack.

Senator KENNEDY. To the best of your knowledge, is a person disqualified if he does not list the requirements in definite order as outlined in section 20 of the constitution of Virginia?

Mr. GRAY. I do not know the answer. I do not think that he is, but I do not know the answer.

Senator KENNEDY. Thank you very much.

Senator ERVIN. He would not be supposed to—under the constitution; is he supposed to give that information in substance?

Mr. GRAY. Senator, I would answer you and I assume it would be a part of the answer responsive to the line of questioning from Senator Kennedy, if that form is being used in a manner to discriminate on the basis of race, then it should not be used for that purpose, and I do not approve its use for that purpose.

Senator ERVIN. It would be safe for the registrar to use the same form for everybody, particular the registrar?

Mr. GRAY. I would certainly feel that he should do so.

I would also like to call attention, if I may, Senator, the Attorney General has just now verified what I thought was the situation in Virginia before I came into this room, but in your questioning of him, I gained a different impression, and bow to what I know would be his superior knowledge. An individual registrar in Virginia does not have both of those forms and give one to one man and one to another. The registrar's discretion is that he will use one form in his office or the other form in his office.

Senator KENNEDY. Who decides whether the registrar will get one form or the other?

Mr. GRAY. As I understand it, it is the discretion of the registrar whether he will use the blank form or the one with the labels on it. But he gives the same form to all applicants, regardless of which one he uses.

Senator KENNEDY. I think it would be helpful to this committee to have indicated in what parts of the State one form is used and what parts of the State the other form is used.

Can you see any reason why different forms are used?

Mr. GRAY. The only proper reason that I can imagine is as you have indicated, that the form which does not label the lines, and for convenience, let us just call that the blank form, that form would obviously require a greater degree of intelligence. I do not think you can make any argument to the contrary. That would be the only reason for using it, that it would require a greater degree of intelligence to fill it in.

Senator KENNEDY. You understand, that by your statements, you have indicated that the form which has the printed material on it would be easier, it would comply with what I guess is your understanding of the law. As a State official, can you give us any rhyme or reason why the other form continues to be printed year after year in Virginia?

Mr. GRAY. I am not a State official, but I cannot suggest an answer to that; no, sir. It is a matter of preference. I suppose—

Senator KENNEDY. It is a matter of preference for whom?

Mr. GRAY. For the registrar.

Senator KENNEDY. Do you understand why any registrar would prefer one form over the other?

Mr. GRAY. As I have indicated, sir, the only suggestion I can make to you is that the blank form, as we have labeled it, obviously requires a greater degree of capability to register.

Senator HART. I apologize for having left and missed the sequence of this. Who causes these two forms to be printed? Perhaps that was asked.

Mr. GRAY. The State board of elections, I presume.

Senator HART. The State board of elections.

Mr. GRAY. The law provides for the two types of forms, provides for discretionary use of one form or the other.

Senator HART. You mean the Legislature of Virginia has directed that the State printer prepare two forms of applications to register?

Mr. GRAY. It has authorized two forms.

Senator HART. Authorized two forms. Were you in the legislature when that law was enacted?

Mr. GRAY. Senator Hart, I am hopeful, but I am not there yet.

Senator HART. I am sure if you had been there you would have asked the question, why in Heaven's name do we have different forms, would you not?

Mr. GRAY. I ask it now.

Senator HART. Up to this point, the record does not have a logical explanation for an answer.

Mr. GRAY. Other than the same explanation as between registrars as there is between States. Why do some States have literacy tests and others not have them? Is it a matter of choice between the States?

Senator HART. I think the analogy is not quite precise. The decision has been made to require certain information of applicants for registration to vote. Then the State says it will print two kinds of applications. The answer to the question why, I think, is yet to be received in the record.

Mr. GRAY. Senator, I cannot give you an answer other than to say to you that I think that any person who is literate could fill in either form with no difficulty. It is obviously easier to fill in the latter. But any person who is literate could fill in either one of them.

I do not think a person who can fill in the one with the blanks without help, who can read the information in that without help, would have any difficulty filling in the one that does not have the blanks labeled.

Senator KENNEDY. Just on this point, as I understand it, Greenville and Brunswick Counties use the form which has—the detailed form, as I understand it.

Mr. GRAY. I do not know.

Senator KENNEDY. Well, as I understand it, Brunswick uses the blank copy, as well as Greenville. Do you think there is a coincidence, and then I shall quote figures, Civil Rights Commission figures, the accuracy of which I think was greatly sustained by Mr. Kilpatrick's quoting of the State of Virginia figures, and in which they were in agreement—

Senator ERVIN. Did not Mr. Kilpatrick say he got them from there?

Senator KENNEDY. He indicated that he had State sources and he felt they were accurate enough to bring before this subcommittee.

Senator ERVIN. My recollection is to the contrary. The record will show that he testified he took some of them from the Civil Rights Commission figures.

Senator KENNEDY. I think for the basis of comparison, looking at Brunswick County, which I understand is one of the counties which does use the blank, according to the Civil Rights Commission figures, there are 79.1 percent of the white people registered and only 19.3 percent of the Negroes.

The thing which I think is of some interest, and I ask whether you differ with my conclusions, is that it seems that the counties which have the predominantly white populations use the form with more details and the counties which have the greater nonwhite population use the application form which has less detail.

Senator ERVIN. I do not believe there is any evidence to that effect, unless the Senator is testifying.

Senator KENNEDY. I have mentioned that Greenville County and Brunswick County, which I understand are two counties——

Senator ERVIN. Are they the ones that——

Senator KENNEDY. They are the ones who brought the case in *Willis v. Woodruff*, which was brought out, stated and mentioned earlier in the hearing, as being the places where this case was brought.

I would be delighted if we could receive from you an outline as to where, which counties use which applications. And also, to the best of your knowledge, the figures, the State figures which would correspond to the white population and the nonwhite population. At least it would help us in indicating whether there is any pattern which might be indicated.

Mr. GRAY. I shall certainly try to give you any information that will help you. I can tell you offhand that the Ninth District of Virginia, which is the far western district of Virginia, in which the population is predominantly white, 90 percent and above white, the blank form is used regularly in the Ninth District. There is a very, very, very low colored population in the Ninth District. So your analogy will not hold up statewide.

If you are trying to relate it to the registration figures, Senator, it falls down very badly, because this form only came in vogue in 1958, and we have permanent registration in Virginia. So for all these many years before this time, they had the form with the blanks labeled on it, and that is not—if the blank form is considered by you as a deterrent to registration, it did not deter them prior to 1958.

Senator KENNEDY. Then has the percent of nonwhite registrations increased since 1958, or decreased?

Mr. GRAY. The percentage of nonwhite registration in Virginia has substantially increased.

Senator KENNEDY. And has it, could you give me any idea, is the increase since the passage of the 24th amendment?

Mr. GRAY. Not statewide, and not any specific figure, sir, but generally, there was a very large increase in the nonwhite registration last fall, prior to the presidential election.

Senator KENNEDY. Well, it is my understanding that in Richmond County, until 1964, 17,000 Negroes had been registered, but with the advent of the 24th amendment, some approximately 11,000 have been added.

Mr. GRAY. You said Richmond County. I believe you mean Richmond City. Our cities are not in counties in Virginia, peculiarly.

In the city of Richmond, I do not know the exact figure, but certainly they are substantially accurate. Large numbers of nonwhite persons registered to vote in Richmond last fall and throughout the State, generally, I believe that was true.

Senator KENNEDY. Do you think that this is the result of the elimination of the poll tax?

Mr. GRAY. I think that that certainly is a contributing factor, Senator. I do not believe it is the only factor. I think the issues in the campaign were peculiarly pertinent to the voters on that basis.

I think many of them registered because they overcame their apathy.

Senator ERVIN. I am inclined to agree with Senator Kennedy that it is sort of peculiar to use two different forms. But I think it is no more illogical than a bill which says that North Carolina cannot have a literacy test although 76 percent of its adult population is registered, whereas New York can have literacy test although only 76.4 percent of its population is registered.

I think it is at least as logical as a bill which says that North Carolina is brought under this act, although 51.8 percent of its adult population registered—voted, rather—whereas Texas is not brought under the act although 44.4 percent of its adult population voted.

Mr. GRAY. I sat here throughout the day listening to figures being used back and forth. I do not understand why the figures are material. If there is any discrimination based on race in any State, the constitutional rights are supposed to be personal rights. I do not think the enjoyment of a constitutional right should depend upon my living in a State where 50 percent of the people did not vote. I think if there is racial discrimination against a voter in my State, he should have his remedy.

Senator ERVIN. It is always easier to lump the innocent and the guilty together and convict them all. When a mob starts out to say, this fellow is guilty, but he will not get his just deserts if we let him be tried by the court; therefore, we shall just lynch him.

Mr. GRAY. Senator, while time remains, there are two provisions of the bill I would like to address myself to.

Senator ERVIN. Most of these forms are printed in the English language, are they not?

Mr. GRAY. Yes, sir; they are.

Senator ERVIN. And anybody who is able to read can read what is on them?

Mr. GRAY. I believe the same wording appears on both forms.

Senator ERVIN. Whoever is able to write can write the answers that are required, can they not?

Mr. GRAY. Yes, sir.

Senator ERVIN. So a person who is literate in the English language would have no substantial difficulty filling out either form, would he?

Mr. GRAY. I do not believe, sir, that any reasonably intelligent child who has passed the fifth or sixth grade would have a great deal of difficulty with either of the forms.

Senator KENNEDY. Sir, if I could ask you, in 1958, did not Virginia pass a law saying that an applicant should register without aid, suggestion, or memorandum, on a blank piece of paper?

Mr. GRAY. Yes, sir.

Senator KENNEDY. Did not the bill say a sheet containing in written form no data, printed questions or words?

Mr. GRAY. I believe so, yes, sir.

Senator KENNEDY. I am informed that this did not work out too well, since Negro organizations were helping Negro applicants to

memorize the appropriate forms, so they could write them out on the blank sheet, where white people were having difficulty.

I believe that in 1960, the law was changed to say that the application could be made on forms which may be provided by the registrar. That permitted the registrar to give one of two forms, is that correct?

Mr. GRAY. Yes, sir.

Senator KENNEDY. And that was enacted in 1960?

Mr. GRAY. Yes, sir, but the registrar uniformly uses one of the two forms in his office.

Senator KENNEDY. He has the discretion as to which form he will give out, whether one or the other?

Mr. GRAY. Yes, as long as we are clear that he does not have discretion which one he is going to give out to each applicant. He uses the same form uniformly.

Senator KENNEDY. I understand, but he can receive from the Board of Electors either one of the two forms, depending upon his own preference?

Mr. GRAY. Right.

Senator KENNEDY. The General Assembly of Virginia in 1962 passed a law requiring the registrar to furnish "a form for registration," instead of the blank sheet. To your mind, has this taken care of any of the discrimination possibility that blank sheets give rise to?

Mr. GRAY. Senator, I do not see how we can say that it is discriminatory if every person who applies is given the same form to use. I do not see that it is a deterrent or a real literacy test to hand a man a form and tell him on the form, we want from you the basic information which any election official has to have to properly get you on the books.

You can do this one of two ways. You can have the applicant fill it in, or you can sit him down in a chair and say to him, "What is your name?" "What is your age?" "Where do you live?" "Have you ever voted before?"

If he answers "Yes," you ask, "Where did you vote last?" and "Have you lived in this precinct for a year?" and, if not, "Where did you live before, so we can check to see if you are registered somewhere else, not voting in several places."

Senator KENNEDY. Now, in the 1962 act, actually, you require that they use the more detailed form, do you not?

Mr. GRAY. They use either one of those two forms that you have before you, as I understand it. Both of those are forms containing the information which they must fill in.

Senator KENNEDY. Well, I feel that as you have mentioned, in this legislation, there are provisions which prohibit the States from altering their requirements within the State, their voting requirements, without permission, without a sanction by a Federal district court in Washington, D.C.

Mr. GRAY. Yes, sir; the legislative power of the States is abrogated; yes, sir.

Senator KENNEDY. This, I think, demonstrates to me why that provision has been included in the present legislation, why there could be a need. Because it seems to me there is a problem here since we have

had this discourse, by your own testimony and by the testimony of the Attorney General.

I certainly want to commend you for the reasonableness and logic which both of you have displayed, the demeanor with which both of you have testified, because it has been reasonable and responsive to the questions and it has been helpful. But it seems to me that just on the face of these questions, in the face of both these applications and by your own statements we have found a registration problem. It just seems troublesome to understand why there has to be a dual set of applications available, the discretion on which to use being given to different registrars, when by your own statement, you have indicated—and I think just on the face, anyone would agree—that one is a great deal easier to fill out than the other. This is really one of the aspects which I think necessitates the kind of proviso in this legislation which I think many of us are troubled by, and sympathize with those who feel that this is such a broad expanse of Federal power. But nonetheless, I think it substantiates a belief of some of us that this kind of provision is necessary.

If you want to comment on that, I would welcome it.

Mr. GRAY. In the first place, Senator, there is other evidence with respect to Virginia. That is that the Civil Rights Commission, of which one of the members was an outstanding Virginia Negro, who is now a Federal judge, found that there was no evidence of racial discrimination in the voting process in Virginia. So we feel that we come in with a fairly good record.

No. 2, I would wonder if the Senate and if the committee would feel that the very same law which Virginia has with respects to these voting forms would be inappropriate in Tennessee or Wyoming or any other State that you may name, and, if so, why is the law not made applicable to them as well as to Virginia? Why do we single out the State of Virginia?

I have further, sir, in the very beginning of my statement, indicated that if you are going to legislate and if you are to deem that this type of action is appropriate, then you can, instead of just outlawing all tests, instead of saying that—because I see, under this bill, even to call the applicant in and set him down and ask him what his name is, if he can respond to that, you must register him nevertheless because you cannot require him to demonstrate his understanding of anything, even of his name. So surely you need to clean up the definition of a "test" under this law.

In doing that, it would be quite simple for you to say, if you disapproved the use of the dual forms, to say, "We shall not deem it to be a test if you hand a man a form with appropriately labeled blanks and ask him to fill in his name, age, residence, and other material which you have to have in order to register a person to vote." You have to have these records.

So if getting that information from a person on a form, labeling the lines and letting him fill it out in his handwriting is not an unreasonable burden to impose on one who would exercise the franchise, say so in the bill. People used to die for the right to vote. Surely they can learn how to read in order to vote.

Senator KENNEDY. Could I just mention on this point that the Attorney General testified in his statement that voting discrimination has been widespread in all but South Carolina and Virginia.

Senator ERVIN. I do not like to interrupt you, but he said that they had no evidence of voting discrimination in North Carolina.

Senator KENNEDY. I am just reading from the Attorney General's statement. I was not meaning to imply anything. I just want to substantiate, and I certainly think that is an appropriate comment by the Senator from North Carolina. I think all of us have admired his diligence in this undertaking.

But I think the Attorney General himself has stated, and I think all of us were deeply impressed by the fact, that he felt that Virginia had not been a place where there had been widespread voting discrimination.

Mr. GRAY. Senator, those of us from Virginia, I may say to you, in the short period of time that I served as Attorney General, I traveled into many other States. I say with pardonable pride that the proudest moment of my life were the moments in which I learned from people of other States, including, Senator Hart, the Governor of your State, the deep respect which people throughout the Nation have for the State of Virginia. I do not think that is all due to our history. I think Virginia has a fine government and a great tradition. We very deeply resent being labeled as discriminatory in our voting procedures, because a great number of our people chose not to go to the polls in November. We resent that very much.

Senator KENNEDY. I share the high regard for the great State of Virginia. I spent three of the happiest years of my life as a law student in Mr. Jefferson's university, and my brother did before me. We have many good friends in Virginia. So I hope you realize that you are among friends.

Mr. GRAY. I understand that, sir.

Could I ask you to indulge me just for a couple of seconds on two sort of technical things about the bill?

One is under section 5(b), and as it relates to section 8, I believe it is—I cannot find it. There is a provision in this bill that if a person is registered by a Federal officer, that registration can be challenged by anyone who feels he was not properly registered by the Federal officer. As this bill is presently written, that is a perfectly frivolous provision, because the bill provides at the present time that when an applicant goes before the Federal registrar and gets himself listed, he is immediately placed on a list, and that is the listing and that starts the time running, and he must be challenged within 10 days of that time. Yet it is not the end of that month, not until the end of that month that the list becomes public. So that no one will know within 10 days that the man has been listed, so no one will ever have an opportunity to effectively challenge it.

The other point is, sir, that I have understood from all the testimony that I have been able to read that it is the opinion, or it is the thought of the authors of this proposal that in those States which have a poll tax, the poll tax would have to be paid 45 days prior to the election in order for an applicant to be permitted to vote under the provisions of this bill. I respectfully disagree with that interpretation. As I read this bill an applicant can go before a Federal registrar and ask to be listed as a qualified voter. The Federal registrar would not be interested in whether or not he had paid his poll tax, because

he would be qualified to vote in a Federal election whether he had paid a poll tax or not. He would be immediately placed on a voting list.

When you get over to the section with respect to the payment of poll taxes, there is no time requirement, this is section 5(e). There is no time prescribed as to when he must pay his poll tax. He can go to the Federal registrar and pay his poll tax up to and including the date of the election.

So the interpretation that has been placed on the bill that he would have to pay the poll tax 45 days in advance, I believe, is erroneous. If that is the intention of the authors I believe section 5(e) should spell out the time limitation, that he may pay his poll tax to the Federal registrar prior to or simultaneously with his registration to vote.

No such provision is in it now, and I think it will lead to great confusion and will permit him to pay taxes on the day of election.

This is important, I think, for some of the reasons mentioned this morning. This does tend to lead to fraud and attempts to pay a person's poll tax in order to get his vote.

I do not have these remarks in shape to file with the committee. I do not want to indulge upon your time with some oratory at this late hour. I would like, if I may have the privilege of placing these in proper form, to submit a copy to the committee.

Senator ERVIN. That will be granted.

As I understand your testimony about these two forms, the only discretion the registrar has as to which form he will use is which form he will receive?

Mr. GRAY. As I understand it, he will get a package of forms, one kind or the other, and he will use that form consistently.

Senator ERVIN. He has no discretion as to which one he is going to pass out after he makes his selection?

Mr. GRAY. I think if we lay what we are trying to talk about out here on the table, he does not have the discretion to hand the simple form to a white man and the blank form to a colored man. Is that not what we are trying to say? He does not have that discretion, no, sir.

Senator ERVIN. I would like to say that the people of North Carolina resent a congressional proposal that one-third of them be branded without a trial but by a congressional declaration that they are unfit to enjoy the same constitutional rights and privileges that the people in 43 other States are going to be permitted to enjoy under this bill.

As a Senator from North Carolina, I resent it myself. I do not believe in legislative trials for anyone, and that is what this bill does. And it persists in keeping North Carolina in here, 34 counties, notwithstanding the fact that the Attorney General himself has come down here and said that he has no evidence that they engaged in violation of the 15th amendment.

Mr. GRAY. Senator, I can only say for Virginia that I sincerely believe if there is any colored person in Virginia who can show he is being discriminated against on his right to vote he would not have to go to a Federal official; I am certain that the State authorities would assist him in getting his right to vote.

Senator HART. If I were one of those persons you have just described and I were aware of the actions taken in the last 6 years by the State legislature with respect to this business of registration

forms, I would not be quite as optimistic or confident as you are. That is my reaction to the sequence of events that occurred in the State legislature in the evolution of that registration treatment.

Mr. GRAY. Virginia has had pains in the last 10 years, along with other parts of the Nation, Senator.

Senator ERVIN. And Virginia certainly did not try to fix an election law to apply in one section of Virginia and not apply in the others, did it?

Mr. GRAY. Not to my knowledge, sir.

Senator HART. That is exactly what Virginia did when they said it is up to the registrar to do it one way here and another way another place; right in Virginia.

Senator ERVIN. We shall recess until 10:30 a.m. tomorrow.

(Whereupon, at 5:30 o'clock p.m., the committee recessed, to reconvene at 10:30 o'clock a.m., Friday, April 2, 1965.)

VOTING RIGHTS

FRIDAY, APRIL 2, 1965

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to recess, at 10:50 a.m., in room 2228, New Senate Office Building, Senator Sam J. Ervin, Jr. (presiding).

Present: Senators Ervin, Hart, Kennedy of Massachusetts, and Fong.

Also present: Palmer Lipscomb, Robert B. Young, Thomas B. Collins, professional staff members of the committee.

Senator ERVIN. I have been asked by the chairman, who is necessarily absent, to preside over the committee today. I now call the committee to order.

The first witness is Mr. Frank Mizell, who represents the State of Alabama.

Mr. Mizell, you are accompanied by Mr. Howell, I believe. You might give your name for the record.

STATEMENT OF FRANK MIZELL, REPRESENTING THE REGISTRARS OF THE STATE OF ALABAMA; ACCOMPANIED BY ELI H. HOWELL

Mr. HOWELL. I am Eli Howell from Montgomery, Ala., serving in the capacity as assistant to Commissioner Mizell.

Senator ERVIN. What is your profession, for the record?

Mr. HOWELL. I am an attorney, sir.

Senator ERVIN. Mr. Mizell, you have submitted a written statement which you can either read or put in the record and speak extemporaneously; or you can use the statement and interpolate it anytime you see fit.

Mr. MIZELL. Thank you very kindly, sir.

Senator Ervin and gentlemen of the committee, I want to say that of course I appreciate the opportunity and the privilege of being here. Also, I appreciate the remarks of the Senator that I represent the State of Alabama. That is flattering to me, but it is not quite accurate. I am just a pick and shovel lawyer. I do not hold any official connection with the State of Alabama. It happens that I represent a number of the boards of registrars in the State of Alabama who have been engaged in, shall I say, rather extensive litigation in the past year or so. I, however, have only been associated with them, been retained by them for the past few months.

But I do have some knowledge of the situation that this committee has under consideration, you might say at the ground level.

Senator KENNEDY. Mr. Chairman, just for the record.

Mr. Mizell, are you representing therefore the registrars of the State?

Mr. MIZELL. Yes, sir, they are separate, independent judicial body is set up by States' taxes. They each, under Alabama laws and regulations, have the authority to make their own rules. One reason why I am representing them is we are attempting to get things uniform so we can eliminate and we think we have eliminated a great deal of the practices of which there has been considerable complaint.

Senator KENNEDY. Just one thing further. Are you representing the Governor as well?

Mr. MIZELL. No, sir, I do not represent the Governor.

I want to say in the beginning that we in Alabama recognize that the right to vote under our system of government is a special privilege which should be conferred on all citizens regardless of race, color, creed, or national origin, subject, however, to the qualifications which are set out in our State constitution and the statutes which are passed by our State legislature. We are acutely aware of the fact that there have been charges leveled against the State of Alabama to the effect that the guarantee of the 15th amendment to the Constitution has not been fulfilled insofar as Negro citizens are concerned. I appear here today before you to answer some of those charges and in opposition to the proposed Voting Rights Act of 1965—not to question the sincerity of the motive of any of the proponents of this bill, but to question both the wisdom and constitutionality of the bill.

Since the constitutional questions have been rather thoroughly covered by other and more distinguished authorities who have appeared before you, we will primarily limit our presentation to the question of the wisdom of the legislation and in this respect, the basic premise of the proposed bill.

The bill purports to abolish racial discrimination which is alleged to exist by reasons of the administration of literacy tests or other devices in Alabama and certain other States.

I want to point out later that it is really not the administration of the literacy tests now; it is a question of literacy itself.

No discrimination is practiced in the administration of the present literacy tests and in instances where discrimination has been alleged, the remedies provided in the Civil Rights Acts of 1957, 1960, and 1964, have proven adequate in every respect to prevent discrimination and to redress the effect of any proven past discrimination. In short, we believe, the reasons advanced for enactment of this legislation are not logical and not valid.

As a point for beginning, the American public has been misled into believing that the present bill is designed to end widespread and unconscionable deprivation of the Negro's right to vote. They have been led to believe that the State of Alabama has discriminated in the administration of its literacy test against qualified Negroes. The public has been deceived with respect to the difficulty of the Alabama literacy test so much so as to believe that the test is discriminatory, I might say discriminatory per se, by reason of its supposed difficulty.

The extent of distortion in this respect has obscured the real purpose of this bill and, in our judgment, good legislation never needs distortion as an ally.

We do not believe that the public realizes that the purpose and intent of this legislation is to abolish literacy as a qualification for voting in the South. It is entirely possible that members of this committee have been misled, perhaps inadvertently, into believing that widespread discrimination is presently practiced against qualified Negroes in their efforts to register and vote in Alabama.

We will cite only a few of hundreds of examples of misrepresentations made by national news media.

Time magazine in its issue of February 12, 1965, on page 16 states that applicants for registration in Alabama are given a 20-page test on government.

Well, that is just not true. They are given a 4-page test and it really, as Mr. Howell very correctly points out, is not a test at all. It is merely an application which consists of part 1, in which the applicant himself is not even obliged to write anything. He just gives basic information as to his birth and residence to the registrar and the registrar fills it out.

Part 2 calls for information as to whether he is a citizen of the United States, where he was born, has he ever been married, and other basic questions which the applicant himself fills out. We have a part 3 inserted which served as a literacy test but which as to areas affected by Federal litigation have been eliminated. We have stopped using it. So that is really not a part of it now. The only other thing is an oath. The person swears that he will support and defend the Constitution of the United States in the State of Alabama and that he does not advocate the overthrow of the United States or the State of Alabama. That is really the test in part 6.

Part 5 is just recording the action of the board. Part 6 is where some person that knows the applicant vouches for the fact that he is a resident as stated, which, of course, is necessary under our laws fixing the list of eligible voters, because I believe it is title 17, I believe section 38 of Alabama Code which says a person may not vote except at the place where he is on the official list of registered voters. Of course, this is for that purpose, to establish validity what place—at what place he should be listed.

Newsweek magazine in its issue of March 1, 1965, page 39, states: "Literacy tests applied to Negroes are often so difficult that college professors could not pass them. The tests applied to whites are so simple that any fool could qualify."

This statement is absolutely false.

Senator FONG. Would you be kind enough to make a copy of that questionnaire available?

Mr. MIZELL. I would be glad to.

(Statement referred to follows:)

[From Newsweek, Mar. 1, 1965]

RIGHT TO VOTE

(By Kenneth Crawford)

Dr. Martin Luther King has a talent that won't win him another Nobel Peace Prize but that almost certainly will get him something he wants much more. He has a way of picking the right opponents. With the kind of enemies he makes he scarcely needs friends. Bull Connor, the former police chief of Birmingham, Ala., is, of course, the prime example. Connor, with his police dogs,

firehoses, and harsh talk, gave last year's civil rights bill the initial impetus that ultimately carried it through Congress. Now Sheriff Jim Clark of Selma, Ala., is performing the same service for a voting rights bill still in process of drafting but soon to be introduced under Lyndon Johnson's imprimatur.

Clark, with his quick temper and lack of restraining judgment, has been almost the ideal patsy for King's demonstrators in Selma. At various times he has been goaded into using his club and his fists but never his head. He has been so grossly inept that even some northern sympathizers with the cause of Negro voting rights have wondered whether he shouldn't be more pitied than blamed. The Negro youngsters he marched out of town at double time were rewarded with the last laugh when they lined up before the courthouse to pray, after he had been hospitalized, for his recovery "in mind and body." Their prayers apparently were in part answered. At least, Clark made a more rapid recovery than James Bevel, the Negro leader who was chained to a hospital bed when he fell ill after Clark arrested him.

LITERACY TESTS

The Selma demonstrations, for all their burlesque aspects, have served the purpose of dramatizing a conspicuous failure in the whole civil rights effort. Nothing so far done has assured qualified Negroes that they may vote now, or that they have any very good prospect of voting in the near future, in many southern communities. On the fringes of the Old South and in some southern cities they have made gains. But there are still counties in Alabama and Mississippi where not a single Negro is registered. Literacy tests applied to Negroes are often so difficult that college professors can't pass them. The tests applied to whites are so simple that any fool can qualify.

This kind of discrimination persists in spite of repeated attempts by Congress—in 1957, 1960, and 1964—to put a stop to it. President Eisenhower, although not remembered as a civil rights zealot, sincerely tried to enfranchise Negroes. As a Senate leader, Mr. Johnson extended himself to the same end. Both agreed with the moderates who have long contended that the right to vote is the key to the problem of race conflict—that Negroes, if they could express themselves at the polling place and so make their influence felt in government, would themselves find ways of righting nonpolitical wrongs.

FEDERAL REGISTRARS

Now Mr. Johnson has promised to make another try. The Justice Department, acting on his instructions, is working on a new formula. Just what it will be is not yet known. It will rest on the 15th amendment to the Constitution, which says simply that "the right of the citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." It probably will provide for Federal registrars to qualify Negro voters when local officials show by a pattern of conduct that they won't.

Such a bill will have a good chance of getting through Congress—and without the agony of delay by filibuster. Russell Long, of Louisiana, the new Senate whip, has indicated that he'll support it and that other southerners will "go along." Indeed, some of the southern Democrats have become convinced that the Negro vote can be their salvation—that it can help them beat back the Republican challenge in their States. For, ironically, Negroes vote Democratic even in the face of oppression by local Democratic officials. And Republicans seem loath to take the advice of Dean Burch, their outgoing chairman, that they go their way henceforth "with no hint of racism, overt or covert." Burch seems to have learned the lesson of 1964 even if some of his associates haven't. But perhaps Dr. King, with Sheriff Clark's help, will be a better persuader.

Senator KENNEDY. I have one or two questions on this point. Would you prefer that I wait?

Senator ERVIN. I shall leave that up to the witness.

Senator KENNEDY. Just on the question of the application, I have one or two questions, but I would be delighted to reserve these questions until you finish your testimony.

Mr. MIZELL. If it is agreeable with the Senator, I would prefer that. However, I am at your pleasure.

Senator KENNEDY. Then I shall postpone questions.

Mr. MIZELL. That is a quote from Newsweek.

Literacy tests applied to Negroes are often so difficult that college professors could not pass them. The tests applied to whites are so simple that any fool could qualify.

This statement is absolutely false. The same tests are used for all applicants. If these statements were true we could understand the basis for concern in these legislative halls and throughout the country for "harsh" legislation, or even punitive legislation.

On the NBC "Today" show questions from the Alabama literacy tests relating to the U.S. Constitution were read to illustrate their difficulty, but it was not mentioned that answers to the questions were provided in printed sections of the Constitution immediately preceding the question.

This had the effect of misleading the public into believing that the answers are required to be furnished from knowledge rather than from an ability to read and comprehend a short section of the U.S. Constitution.

Millions of Americans have heard or read these statements: "The Chief Justice of the United States could not pass the Alabama literacy test," and "Applicants may be required to recite the whole of the U.S. Constitution." The situation has received so much attention that it is now the subject of comedy.

We emphatically deny that any of these widely disseminated distortions are true.

Another example is found in hundreds of newspapers throughout the Nation which have printed questions from the Alabama text without once indicating that the answers to the questions were provided in printed sections above the questions. Allow me to illustrate just how misleading such techniques are and can be. I do not mean to embarrass any member of this committee, but I would like to ask these questions:

- (1) On what lake is Fort Ticonderoga located?
- (2) In what year did the French build the fort?
- (3) What general led the British soldiers in 1759?
- (4) To what city were cannons from Fort Ticonderoga hauled?
- (5) In what year was the ruined fort restored?

It must be obvious that the average American citizen cannot answer these questions from knowledge. These are questions taken from the 1963-64 literacy test forms used—not in Alabama, but in New York. To present these New York questions or the Alabama questions as evidence of discrimination or as evidence of unfairness or difficulty would certainly deceive unless it were revealed that answers to the questions were contained in a printed paragraph preceding the question.

Senator KENNEDY. Mr. Chairman, at this point, I would like to have included in the record the registration application form for the State of New York, printed in its entirety in this record.

Senator ERVIN. I would suggest that it be included in the record after his testimony.

Senator KENNEDY. After his testimony, yes.

Senator ERVIN. The New York application or the application form used and prescribed by the New York laws or New York regulations

will be printed in the record in full immediately after the testimony of Mr. Mizell. I will supply that for the record.

Senator FONG. Do you have a copy of the New York application form there?

Mr. MIZELL. I will look and see. I am not sure, sir.

It is, of course, a literacy test, which is really what it is. I think I made clear, but if not, I do want to make clear that in New York, as in Alabama, the answers are printed on the form preceding the question, so it is a question of reading, getting the information, and writing answers to the questions.

In New York there are eight questions provided and six must be answered correctly to pass the test. Eight questions are also provided on the Alabama literacy test, four of which are reading comprehension questions and four relate to local, State and Federal Government, designed to show some comprehension of basic issues of candidates and offices. I might add that in Alabama, when we have constitutional amendments to be voted on by the people, these amendments are printed on the ballot. And of course, it is obvious that an illiterate voter just simply does not know what he is doing or what he should do, if he cannot read and have some comprehension of what he is voting on.

Before passing from the subject of the use of distortion to suggest discrimination it may be of interest to note that the Department of Justice is not above the use of such device.

For example, statistics have been used by the Department of Justice as evidence of discrimination but they are misleading. A single Negro individual in one case was rejected for registration 24 times. Yet, these rejections were included as evidence of individual Negroes rejected to sustain the charge of discrimination based on statistics.

In one county, the Department of Justice cited 247 Negro rejections within a specified period to show statistically that Negroes were discriminated against. All of these 247 rejections were accounted for by 58 persons. And time after time, where other counties have been litigated, I have asked the question from the standpoint about the number of repeats and it is rather amazing, because it is done for the purpose, we think, of creating statistics.

Naturally such distorted figures would tend to show discrimination. Citizens of the United States should not feel compelled to stand on guard against such tactics by our own Department of Justice. These are but a few examples, where the Department of Justice has illustrated a determination to fabricate evidence to sustain allegations of discrimination.

Other cases involve advising out-of-State students, nonresidents of the State of Alabama, to apply for registration knowing they were not qualified under Alabama law. That refers specifically to Macon County, where Tuskegee Institute is located.

There is another example worthy of mention of a Federal district judge finding discrimination as a matter of fact on the basis of evidence which showed that under one test 19 percent of the Negro applicants failed, whereas 34 percent failed under a new test. So he ruled out the literacy test. But this did not take into account overwhelming evidence by local Negro leadership in that particular case and before the Civil Rights Commission which indicated that the vast

majority of qualified Negroes in that county had already been registered.

I think that in 1950 there were less than 30,000 registered. The illiteracy rate of eligible voters of that segment of the population was 32 percent. And by 1960, 63,000, or more than 100-percent increase in registration, had been accomplished and the literacy rate had increased to 45 percent; in other words, an increase of approximately 15 percent in the literacy rate resulted in a 400-percent increase in registration and it had grown progressively that way, on down to this date.

Now, as to this 123,000, this represents approximately 59 percent of the qualified literate Negroes, meaning those who are 21 years old or over and who met residence requirements and have completed the sixth grade. That is a presumption of literacy under the Civil Rights Act. I would not say that it is really a presumption of literacy. I personally do not agree with the fact that because somebody has completed a sixth grade he is necessarily a literate person. There may be people who have never completed the sixth grade who are far more literate than those who have, or sometimes than those who have even finished college. But that is a case where implementation by way of rule of evidence, set up in the Civil Rights Act of 1964, have really, through implementation, been created into substantive law, which we think was not the intent of Congress when it was put in there.

By comparison, roughly 84 percent of qualified whites are registered.

Therefore, statistics based on population alone without regard to literacy cannot and should not be used as valid evidence of discrimination.

What we are saying is that the problem of discrimination in the administration of literacy tests is not nearly as great or as widespread as many of you may have been led to believe. This being true, we believe most sincerely that the remedies provided by the Civil Rights Act of 1964 are more than adequate to correct and to prevent and to redress any offenses against State and Federal law which may have occurred in the past. The answer to the problem is not to be found in Federal registration of illiterate whites or Negroes, but rather the answer is—well, not to abolish illiteracy but eliminate it. It is an ironic paradox that at the very time Negro schoolchildren who are not able, not old enough to vote, are taken from the schools and into the streets to demonstrate, that the Alabama Legislature was implementing a program for free textbooks for all the children in grades 1 through 12 in Alabama which has for its purpose the prevention of dropouts and to help abolish illiteracy.

It is further a paradox that an economic boycott would be advocated as a means of redress, when school revenues depend directly on consumer purchases in Alabama. It is a further paradox that Negro schoolchildren were skipping school in Dallas County at the very time the Justice Department was claiming in Federal court that the State was causing the Negro to be "culturally deprived."

Some may suggest that a plan of abolishing literacy rather than literacy tests is too slow, but a faster remedy in the form of registration of illiterates, whether white or Negro, may be a cure more to be avoided than the disease.

Others may contend that present remedies provided by the Civil Rights Act of 1964 are inadequate to meet the problem of future dis-

crimination in the administration of literary tests, but the fact is that the present judicial remedies provided by the Civil Rights Act of 1964 are more than adequate and have proven so in Alabama. For example in suits, it has been ruled that any person denied the right to vote may apply to a Federal court and his application will be processed either by a court-appointed official or referee. One Federal judge requires minute reports of registration to be furnished to him. In instances where it is held that registration procedures or a currently used literacy test is more difficult than those used for the registration of white persons, in the past Federal courts have enjoined the use of such procedures or literacy tests all together. That is really the situation in Alabama today. We do not have any literacy tests where there has been any question of so-called discrimination in so-called illiterate counties. The unmitigated and, by the way, unreported truth is that in five Alabama counties today, literacy tests cannot be used for Negro applicants. Everyone has heard of Selma—at least one side of the Selma story. But what is the other side?

In Dallas County, the center of the Selma demonstrations, and in Perry County and Montgomery County—these representing the counties where practically all of the major demonstrations have occurred, no Negro can be rejected for failure to pass a literacy test, and in fact, in none of these counties can a literacy test be given. These facts are not reported by the press and the Justice Department ignores them. Many of the ministers and other sincere and conscientious persons who journeyed to Alabama, in our judgment, were misled into believing that the test required of qualified Negroes was so difficult that the Chief Justice of the U.S. Supreme Court could not pass it. We cannot help but wonder if they knew that in truth a literacy test was not required in the areas of demonstration and that they were demonstrating instead as a part of a well-documented plan to abolish literacy as a qualification for voting in the South, that they would have understood the real problem and the real reason for the demonstrations. In fact, one Jewish rabbi—I think he was from Pittsburgh—charged this one particular group leading demonstrations in Montgomery, Ala., wanted “dead bodies—our bodies.” Such is the truth. The leader of the mass demonstrations has admitted publicly that demonstrations cannot be successful unless violence occurs.

We recognize, of course, that there are those who believe that a fuller participation in government by illiterate Negroes will provide a sort of panacea for the educational and economic ills to which all economically deprived are subject.

We believe, however, that this view is superficial and repetitious of the errors made during the Reconstruction era by persons equally concerned and equally sincere.

The so-called racial problem of the South is not racial. It is economic and educational. Poverty, ill health, illiteracy, inadequate housing and inadequate educational opportunities are not racial problems in the South but problems inherited from the past and in a large measure attributable to superficial and shortsighted decisions of those who had previously sought solutions through racial legislation.

The effect then was to divide our people. It generated racial hostility and developed patterns and attitudes and outlooks in which the races were unfortunately divided into politically hostile camps.

Who can seriously contend that it will benefit either white or Negro to subject nine counties in the State of Alabama to the political domination by a majority which is illiterate?

That is precisely what will happen in nine counties of Alabama, each of which is characterized by an agricultural economy which cannot support adequately any of the State services so necessary to better educational opportunity and economic industrial development. On the other hand, great harm can result. They depend on funds out of the general appropriations, funds derived from other parts of the State.

Action begets reaction. The registration of vast numbers of Negroes who are not qualified from the standpoint of literacy will inevitably tend toward the development of a bloc vote to counteract the expected bloc vote of federally registered illiterates. We doubt this is a desirable end.

One must remember that in Alabama, eight constitutional officers are elected State at large. Any effort made to divide the white and Negro into hostile political factions cannot benefit anyone. Those who deliberately seek to cultivate suspicions and hatred and intolerance between the races are a part of the divisive forces in this Nation, many of whom seek only to serve the objectives of international communism and not the best interest of the Negro or this Nation.

I will not take your time by citing all the Communists or any of them who have infiltrated the Negro movement and who are now exploiting it to the hilt for no good purpose and to the detriment of us all. However, you deceive yourself if you react complacently to the Communist infiltration so manifested in the recent events in Alabama in their street tactics, lies, and distortions.

At this point, let me make it unmistakably clear that the people of Alabama, in my judgment, recognize that all economically deprived people have legitimate aspirations and goals and that they have every right to advance their interest in any of the traditional methods employed by organized labor, farm groups, business and professional organizations, and others. Freedom of speech and assembly and the right to petition for redress of grievances is a part of the American tradition. It is a tradition honored no less in Alabama than in any section of the Nation. We have never opposed lawful and peaceful demonstrations. We have never condoned or tolerated lawlessness and violence and we have never advocated defiance of law. We vehemently deny that hatred and ill will exist between the races of the white and Negro people of the South.

It is a matter of common knowledge and a matter of great pride to us that the people of the South have long been characterized by a sense of devotion to the principles of Christian charity, tolerance, and forbearance. That forbearance has really been exercised in the last several months.

I point the finger of shame and I call upon the spirit of fairness for the American people to condemn and censure those who seek to indict a whole people for the acts of lawlessness of a handful of its citizens who are amenable neither to law nor to conscience. Of course, we have had some unfortunate incidents in our State just as there have been some unfortunate incidents in all States throughout the history of our Nation, but as Ed Mundburg says, you cannot indict

a whole people. We in Alabama are capable of solving our problems, but a solution will not be accomplished on the basis of purely racial legislation.

We have mentioned previously that others have covered the constitutional questions involving the powers of Congress to prescribe in the area of voter qualifications, but we state a few points in this regard.

Our forefathers who drafted our Constitution deliberated long and hard and freely disagreed, but they had the wisdom to see that the Federal Government should not be given the right to determine voter qualifications. This bill departs from this clear concept of constitutional government and from the history of constitutional government.

Mr. Hamilton, of New York, in the "Federalist Papers," stated that it was wise to deposit the right to determine the qualifications of electors with the States. This wisdom is not destroyed by any amendment made to the original Constitution.

Therefore, traditionally, the right to determine voter qualifications has been left with the various States and as a consequence, almost half of the States have laws which provide for some form of literacy test as a requirement for voter registration. Furthermore, the Supreme Court has emphasized time and time again that the States have the power to determine voter qualifications. To be more accurate, I think 19 States do. In 1959, in a case from North Carolina, the Supreme Court expressly reaffirmed this position.

The High Court said:

The States have long been held to have a broad power to determine the conditions under which the rights of suffrage may be exercised.

The Court further said that North Carolina's requirement that a prospective voter "be able to read and write any section of the constitution of North Carolina in the English language" was one fair way of determining whether a person was literate and that a requirement that a person be able to read and write was not a calculated scheme to lay a trap for a citizen.

In article I, section 2, it is provided that "the electors of each State shall have the qualifications requisite for electors of the more numerous branch of the State legislature." A similar provision is the 17th amendment.

And, of course, your present chairman, as I am sure all of you are, is familiar with the *Northampton* case from North Carolina, where the Supreme Court of the United States, I believe as late as 1960, expressly reaffirmed this position. It said:

The States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised. We do not suggest that any standard which a State desires to adopt may be required of voters. But there is wide scope for the exercise of its jurisdiction: residence requirements, age, previous criminal record are obvious examples indicating factors which a State may take into consideration in determining the qualifications of voters; the ability to read and write likewise has some relation to standard design to promote the intelligence of the ballot. A State might conclude that only those who are literate should exercise the franchise.

That is, of course, *Lassiter v. Board of Northampton County*, 368 U.S. 95, and as I say, 19 States have followed that thought.

More than 40 years after the Constitution of the United States was passed, the people of the United States confirmed that same thing in the 17th amendment.

The 14th amendment, in section 2 thereof, provides a remedy which may be imposed against a State or its people in the event that the right to vote is denied to any of the male inhabitants of such State, who are 21 years of age or older and citizens of the United States. Had the Congress of the United States seen fit in 1866 to write the 14th amendment in such a manner as would have allowed the Federal Government to determine the qualifications of the electors in the various States, the simple expediency would have been to have proposed an amendment to the Constitution with such a provision. Instead of that, no, it is not within the scope of our authority. They just provided a means of punishment in case there was the denial of the right to vote. As I have said, that is in section 2 of the 14th amendment. The 15th amendment is no different. It merely provides that the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude. There is nothing in the amendment which grants to the Federal Government the right to set the qualifications of electors within any State.

I interpolate, the 15th amendment does not say the Negro must be allowed to vote because he is a Negro. It simply says he cannot be prevented from voting on that account. There is nothing in the amendment which grants to Federal Government the right to set the qualifications of electors in any State.

Before leaving this subject, we do feel that circumstances existing in Alabama will illustrate the fact that the 50-percent criteria for classification of States to which this bill would apply is arbitrary, as admitted by the Attorney General, and without reasonable justification as a criteria for establishing or determining the existence of discrimination or the denial of the right to vote. This, too, may invoke a constitutional question.

For example, in the last general election, there were countless thousands of persons registered in Alabama but who did not vote for the reason that they were Democrats and would not vote Republican and in the case of Negroes in particular, who would not vote either or for unpledged electors. Was this by design? There is much evidence to indicate that a plan to abolish literacy as a qualification for voting has been on the boards and I might say in the minds of people, for a long time. Will it be possible in other States for a minority to withhold its votes in a general election and subject other States by simple amendment to this act to the 50 percent criteria as a basis for abolishing a literacy test?

Will the Senate sanction this sort of thing as a part of the democratic process? All it would take would be a simple amendment to this and then it would be possible for the minority in a State to control the situation and abolish literacy.

Historically, Alabama has been a one-party State since 1876—elections have been won or lost in Democratic primaries. The numbers who voted in the general elections signified nothing more than indifference and such figures do not furnish a reasonable basis for classification.

I just state, in my memory, up until recent times, the primary of course, was your real fight. You had the general election and in a

county of 50,000 people, you might have as many as 1,500 or 2,000 people participate in a general election. It was a foregone conclusion.

All of you are aware that during and following Reconstruction, Negro voters outnumbered white for many years. It is also common knowledge that they were affiliated with the Republican Party. This action begot reaction. The white democratic primary resulted. What self-respecting Negro would want to vote for candidates of a party whose slogan was "White Supremacy."

Republicans have never nominated by party primary elections, and the result is that the Negro Republicans voted only in general elections. Since a Republican candidate could not win, it was only natural that the Negro should lose interest. Nevertheless, it is a matter of historical fact that a Republican organization with substantial Negro membership continued its existence in Alabama and Negroes continued to vote in significant numbers.

The Negro did not participate in Democratic primaries in any marked degree until the white primary election was ruled unconstitutional in a series of cases highlighted by the famous "White Primary" case in 1944 in Texas.

Furthermore, veterans, white and Negro, were exempt from payment of poll taxes in Alabama shortly after the war. Persons over 45 are exempt—white and Negro. In addition, the cumulative features of the poll tax were repealed in Alabama in 1953.

The repeal of the cumulative poll tax law, more than any other, accounted for a tremendous increase in registration of qualified persons in Alabama. Unofficial statistics and studies reveal the interesting fact that the vast increase in numbers of white and Negro voters following the repeal of this statute were women.

The point we make, however, is that the fact that 50 percent of the population does not vote in a general election is not in the least indicative of racial discrimination or of threats or intimidation. It is just a historic fact, gentlemen.

Mass pressure generated by irresponsible and gross distortions and truth cannot justify this bill.

The truth is that illiteracy, conviction of disqualifying crimes mobility of the population in the rapid transition from rural to urban areas—which affect residence requirements—strict requirements with respect to absentee voting, plus plain inertia and indifference account for the fact that 50 percent of the voting age population included did not vote in the general election last November. Nor are these conditions unique to Negroes. Roughly, one-third of adult whites in Alabama over 21 years of age are not registered.

To further illustrate this point, many men are disqualified from voting due to conviction of disqualifying crimes. According to the Uniform Crime Reports of the United States, issued by the Federal Bureau of Investigation, Alabama ranked 16th from the lowest in crime rate, but still for 1963 the rate was 848 per 100,000 population. Other figures indicate a conviction rate, mostly of men, of about 10,000 per year for the last 10 years. That takes a large hunk of people out of the voting business.

Many Negroes who complete more years of schooling in many instances leave the rural areas of Alabama and move to the urban areas in Alabama or more outside the State, thus leaving within the State

the less literate Negro. In that connection, in one of the counties in which litigation is pending, I recall specifically of the Negroes that are of voting age, really, of 25 years of age or over, because that is the only age we could get from the U.S. census reports on educational levels, that of the Negroes left in that county who have not registered of 25 years of age or over, 84 percent of them were of the fourth-grade level or below. Yet they complain about incomplete registration in that county.

Census figures reflect this migration of the more educated Negro from the State. In brief, Alabama Department of Education figures show that every time Alabama educates three Negroes into the literate class, two of them leave the State. Many go to the urban areas of New York City, Chicago, Philadelphia, Detroit, Washington, D.C., Los Angeles, and other cities. The result is an increased burden on Alabama to provide for the elderly and the uneducated through welfare in many cases. The further result is the burden it places on the State to meet the formula of this bill.

In conclusion, let me say that the U.S. Supreme Court in *Louisiana v. The United States*, decided on March 8, 1965, a way to assure fair and impartial administration of a literacy test. That is really what is sought to be abolished by this bill, the literacy test, not discrimination. Because for all practical effects, and I say this sincerely, gentlemen, because I am there where it is working, for all practical purposes, 99 percent, discrimination in the administration of the test is a thing of the past. It is gone. What we are really trying to do is abolish illiteracy as one of the factors of qualification for voting. And of course, this bill abolishes such things as criminal disqualification. I have forgotten whether idiots are accepted or not. But it is a rather broad sweeping measure, to say the least of it.

But now, in the case of *United States v. Duke*, decided on May 22, 1964, by the fifth circuit, case No. 20807, which covers it, they went ahead and approved the principle of freezing past practices of discrimination which the lower court found. They said, well here in the past, when tests were administered in such a way that they worked against the colored people and in favor of the whites, and as a result, if the majority of Negroes are not registered, they should have that opportunity. Therefore, we are going to exceed State statutes and freeze these illegal past practices and make the officers of the State continue to violate the State laws and give everybody the same opportunity to register under the relaxed practices. But the courts seemed to realize the evil of the fact that perpetuation of illegal practices or past bad practices into the future is not a worthwhile accomplishment. Because they go on to say in this case that obviously, when the court has found that a pattern of discrimination has denied the opportunity for Negroes to register, although it has registered practically all the willing white members of the county, registration of all voters would be the only completely fair and effective means of clearing away the effect of the discrimination.

That path, of course, lies open to the State if it sees fit to pursue it.

Thus any remedial injunction freezing the earlier standards to permit the qualifications of the Negroes discriminated against must, and this is mandatory, must in the alternative authorize the State to

require a reregistration of all citizens using such standards of eligibility as meet constitutional requirements.

Now, incidentally, we here are starting, have made a motion and Federal petitions in that respect in some pending litigation in Alabama. But if this voting right act is passed, we will be cut off from that. We shall not have the privilege of eliminating the effect of these past practices and putting our house in order.

That *Duke* case was commented on in this *Louisiana v. United States* decided on March 8, 1965, decided by Judge Black, where he said, where the Supreme Court also approved the freezing. It went on to say:

Under those circumstances, we think the Court was quite right to decree that as to persons who met age and residence requirements during the years in which the interpretation test was used, use of the new citizenship test should be postponed—

In other words, freeze the old practice—

should be postponed in these 21 parishes where registrars used the old interpretation test until these parishes have ordered a complete reregistration of voters, so that the new test will apply to all or for none—

And cited this case of *United States v. Duke* I have just mentioned.

In this connection there is pending in the Alabama Legislature a bill which would require a literacy test similar to that administered by New York State, with similar provisions with respect to educational achievement acceptable as evidence of literacy and provisions to assure an absolutely impartial administration of the test.

Therefore, Mr. Chairman, we respectfully submit that the bill now under consideration has no constitutional basis and is predicated upon an erroneous presumption that literacy tests are used to discriminate against Negroes. We further submit that charges of discrimination in the administration of the test in Alabama have been grossly exaggerated and these charges, together with other distortions of fact, have caused mass pressure to be applied upon the Federal Government to correct discrimination in voter registration, which we say does not now exist, and which, if such discrimination did exist, the Federal courts, using present laws, are competent to correct, including the allowance of complete reregistration of voters, as sanctioned by the U.S. Supreme Court.

I want to add, however, in closing, that every court decree handed down in this type of case and every Civil Rights Act and every Voter Rights Act which takes a right away from Alabama and its internal government is taking a right away from all the people of all the States of America and adding it to a supergovernment, which even now is reaching startling similarity to communistic type of government by the way it is regulating and, yes, dictating, even some of the minutest details of our ways of living and our ways of making a living. So we say that the desire now for this legislation is to abolish literacy and to enact compulsory voting. What does compulsory voting sound like? It does not sound like the United States. I do think this is particularly apropos of the situation. With your kind indulgence, I shall read a little statement that the Republican President, Calvin Coolidge, made at the College of William and Mary, on May 16, 1926.

No method of procedure has ever been devised by which liberty could be divorced from self-government. No plan of centralization has ever been adopted

which did not result in bureaucracy, tyranny, inflexibility, reaction, and decline. While we ought to glory in the Union and remember that it is the source from which the States derive their chief title to fame, we must also recognize that the national administration is not and cannot be adjusted to the needs of local government. It is too far away to be informed of local needs, too inaccessible to be responsive to local conditions. The States should not be induced by coercion or by favor to surrender the management of their own affairs.

Thank you, gentlemen.

Senator ERVIN. Is it not just one step beyond compulsory voting to a law which would tell people how to vote?

Mr. MIZELL. Yes, sir, I thoroughly agree with the chairman on that. It inevitably leads to that situation.

Senator ERVIN. I would like to ask you whether you agree with me in the view that there is no need for any new law to secure the registration of any qualified person anywhere in the United States?

Mr. MIZELL. I think that is eminently correct. We tried to state that in our feeble way. I can say definitely from firsthand knowledge that it is being done in the State of Alabama today under existing laws.

Senator ERVIN. I would like to ask you if there are not a number of statutes available to the Attorney General under which any election official who willfully denies to any qualified person of any race the right to vote can upon conviction be sent to prison for as much as a year and fined as much as \$1,000?

Mr. MIZELL. That statute exists and I have heard of it being enforced or at least investigations in connection with it being made, yes, sir.

Senator ERVIN. And is there not another statute, for the protection of any qualified person who is being denied the right to register to vote on the basis of race or color pursuant to a pattern, or agreement between the election official and one or more other persons?

Mr. MIZELL. Yes, sir.

Senator ERVIN. This requires a conspiracy between election officials and others, does it not? At least more than one person?

Mr. MIZELL. Well, I think their acts could no doubt be construed as a conspiracy.

Senator ERVIN. If there is a systematic plan in part of any voting district to deny qualified people the right to vote on the basis of race, it necessarily involves a conspiracy, does it not?

Mr. MIZELL. I should certainly think so, yes, sir.

Senator ERVIN. Is there not another criminal statute which provides that wherever an election official—this is the substance, not the wording—conspires with another person to deny any qualified person the right to vote on any grounds whatever, he is guilty of a felony and can be imprisoned as much as 10 years and fined as much as \$5,000 or both?

Mr. MIZELL. That is my recollection, yes, sir.

Senator ERVIN. Now, are not both grand and petit jurors in Federal courts drawn from a jury box prepared by the clerk of the Federal court and the jury commission prepared by the Federal judge?

Mr. MIZELL. Yes, sir.

Senator ERVIN. And the State has no control.

Mr. MIZELL. No control over that. For instance, in Alabama, women do not sit on the jury under Alabama laws. Yet so far as the Federal courts are concerned, they do sit on the Federal juries.

I tried a case a week—the week before last and one of the lady jurors on the Federal jury had the misfortune to admit kinship to me.

Senator ERVIN. Now, State officials have no power whatever to do anything in respect to either the selection of persons whose names shall go into the jury boxes in Federal courts or in respect to the names that are drawn from those jury boxes, do they?

Mr. MIZELL. None whatever.

Senator ERVIN. That is solely a Federal function?

Mr. MIZELL. Yes, sir.

Senator ERVIN. Now, the Federal Government has in every judicial district in the United States a full-time U.S. attorney and several full-time assistant U.S. attorneys, does it not?

Mr. MIZELL. Yes, sir.

Senator ERVIN. And the Federal Government has in every State of the Union FBI agents to conduct investigations into violations of law, does it not?

Mr. MIZELL. Along with numerous subagencies throughout the State.

Senator ERVIN. Is it not true that Alabama and most of the other States covered by this bill are in large measure rural States?

Mr. MIZELL. Yes, sir, comparatively speaking, although I believe that we have just crossed the line into an industrial State.

Senator ERVIN. They are, however, States where a very substantial part of the people live in rural sections.

Mr. MIZELL. They do, and that is our history, of course; it is a rural history.

Senator ERVIN. And is it not true that the Federal courts in each of these States sit in certain selected places in the State and not in every county of the State?

Mr. MIZELL. That is true; yes, sir.

Senator ERVIN. Is it not true that as a result of that, normally a person who is charged with violation of a Federal criminal statute is tried at some distance from where he lives and where he has friends and influence?

Mr. MIZELL. It often happens that way. It is not altogether true in every case. But it often happens that way.

Senator ERVIN. He is either normally a man——

Mr. MIZELL. Well, in my district, the middle district of Alabama, the court sits at Montgomery largely. That is the home base. My native county is 100 miles to the south and people have to come from there to Montgomery to be tried.

Senator ERVIN. In a great many instances, often a man is tried in Federal court for a Federal crime anywhere from 25 to 100 to 200 miles from his home?

Mr. MIZELL. Yes.

Senator ERVIN. And does not the Federal judge have the power to express an opinion on the facts in a criminal case?

Mr. MIZELL. They very often do.

Senator ERVIN. Has it not been your experience as a lawyer in Federal courts, where the judge does express an opinion on the facts, the jury virtually always follows his opinion?

Mr. MIZELL. Yes, sir; that is my opinion. Of course, it depends upon which way the judge comments as to how I feel. I can say that.

Senator ERVIN. The Attorney General testified here the other day, and he admitted that in the past 4 years, there had not been a single prosecution instituted under either of these criminal statutes, based upon alleged deprivation or conspiracy to deprive any qualified person of the right to vote on the basis of race or color. Do you not believe the Attorney General ought to try one of those criminal prosecutions before he indicts a whole people and says he does not think he can get a conviction?

Mr. MIZELL. I think he should try that and I also think the Attorney General should investigate the question of the administration of literacy tests in other States throughout the United States. I doubt that this committee has any statistics as to other States than four or five States in the South on this proposition, because I do not think the Department of Justice has taken into consideration the fact that Hawaii, I think, has some sort of test and New York, and various other States I can name.

Senator ERVIN. That is one of the inequities of this bill, is it not? It would try to eliminate the literacy tests in some 7 States and leave the literacy tests in full force and effect in 13 or 14 other States?

Mr. MIZELL. Yes, sir.

Senator ERVIN. In addition to these two criminal statutes, is it not true that the Attorney General has the power to put into effect the litigation under the Civil Rights Act of 1957 and 1960?

Mr. MIZELL. He certainly has and he has extensively done so.

Senator ERVIN. And does not the Civil Rights Act of 1957 provide that in any case where the Attorney General has reason to believe that any voter is about to be deprived of his right to vote on account of race or color, he can bring a suit in the name of the United States and it is the business of the taxpayers of the United States to secure that man's right to vote?

Mr. MIZELL. Yes, sir.

Senator ERVIN. And is not that case triable before a Federal judge without a jury?

Mr. MIZELL. That is my recollection.

Senator ERVIN. In other words, it is providing a remedy under the Federal law?

Mr. MIZELL. That is right, yes.

Senator ERVIN. The 1960 Civil Rights Act provides that if the court finds in one of these actions brought under the 1957 act that a single individual who is qualified to vote by State laws has been denied the right to vote on account of his race or color, the court can then inquire as to whether or not that denial was pursuant to a pattern involving numbers of that individual's race and on the finding that such a pattern exists, the court itself can pass on the qualifications of the voters or appoint referees to do so.

Mr. MIZELL. He definitely can and that has happened a number of times in Alabama.

Senator ERVIN. There is no limitation in that act upon the number of voter referees the court can appoint when he finds a person has

been denied the right to vote pursuant to a pattern because of his race?

Mr. MIZELL. No limitation of number and no regulations or statement as to qualifications.

Senator ERVIN. And the question of whether or not there has been a denial or a deprivation of the right to vote on the basis of race or color and also whether it was done pursuant to a pattern is a question of fact to be decided by the Federal judge without a jury?

Mr. MIZELL. Yes, sir, that is correct.

Senator ERVIN. Do you not believe that competent attorneys under these statutes can procure the registration of any qualified voter who is denied the right to vote on account of his race or color anywhere in the United States?

Mr. MIZELL. I very definitely believe that and know that it has been done in many instances.

Senator ERVIN. Do you not agree with me that in an effort to pass bills of this nature, the charge that literacy tests are tests used to deny the Negroes the right to vote has been magnified out of all proportion to the truth?

Mr. MIZELL. Yes, sir; I thought I had gone into that extensively.

Senator ERVIN. I would like to call your attention to something to sustain this out of the report of the U.S. Civil Rights Commission, the one called "The 50 States Report." This shows on page 454 that during the year 1960, 239,687 names were added to the registration books in North Carolina; that 208,672 of these names were those of whites and 31,015 were the names of nonwhites.

Page 463 of the same book shows that a number of persons in the whole State of North Carolina, not only in the 34 counties that are being deprived of a portion of their sovereignty under this bill, but in the other 66 counties in the whole State, 759 persons failed a literacy test. In other words, 759 persons out of a total of 239,687 failed the North Carolina literacy test.

Now, I do not guarantee my figures, but I have had them checked by others who are better mathematicians than I am. This reaches the astounding conclusion that this percentage of North Carolinians were denied the right to register on account of the literacy test: 0.00318. Turned around the other way and putting it affirmatively, it shows that of all the North Carolinians, white and nonwhite, who took the literacy test, who applied to register in 1960, this percentage passed the literacy test: 99.99684.

Now, do you not agree with me that a bill which would deny North Carolina or any part of North Carolina the right to administer its literacy test on the basis of figures like that is worse than using an atom bomb to kill a mighty small mouse?

Mr. MIZELL. It is on the same principle and I agree with the Senator. In that connection, if I may, I would like to point out that 90 percent of the increase of Negro voting registration in Alabama, starting in 1963, had been in the counties not under court order and that those that are registered are literate Negroes.

Senator ERVIN. Yet the President of the United States, the Department of Justice, 66 Members of the U.S. Senate, and I do not know how many of the Members of the House of Representatives, are urging Congress to pass a bill which would say that 34 counties in North

Carolina should be deprived of the right to exercise a constitutional right secured to them by the second section of the first article of the Constitution and the 17th amendment and by the 9th and 10th amendments because only 99.99684 percent were able to pass the literacy test in North Carolina in 1960.

Mr. MIZELL. Yes, sir.

Senator ERVIN. Can you imagine any premise for a bill that is more absurd than that as to North Carolina's 34 counties?

Mr. MIZELL. Well, of course, you have to recognize that perhaps in the birth of this bill is a lot of emotion and with some elements, we cannot help but think some madness.

Senator ERVIN. So far as I can see, they still persist in that recommendation, notwithstanding that the Attorney General of the United States came down here and told this committee that he did not have any evidence of any present violations of the 15th amendment occurring in any 1 of these 34 counties.

Mr. MIZELL. Yes, sir.

I will say, I just noted a UPI article in yesterday's paper, talking about a conference, a news conference of President Johnson, that makes this statement:

Under the Johnson plan, the illiterates are home free although the President could not quite bring himself to say so in his news conference discussion of the voting rights bill. But Johnson did say that the bill was open to improvement by amendment.

I heartily agree. One way, if I may suggest here, if you really want to go about eliminating these past practices and if you want to pass a bill like this, put a provision in it saying that "Any county or other political subdivision of a State found by a Federal court (in a final decision) to have denied any citizen the right to vote by reason of color or race shall thereupon be required to strike from its list of registered voters all persons registered during the period of discrimination as found and established by the court, and shall thereupon fix and order a period for reregistration of any person stricken from its said list of registered voters under the constitutional and statutory requirements of the State for voter registration; and, the taking, processing, and disposition of all such applications for reregistration shall be accomplished on a strictly nondiscriminatory basis in accordance with the requirements of the 14th and 15th amendments of the Constitution."

Senator ERVIN. I am going to offer an amendment providing that any State where 99.99 percent of its people pass the literacy test be eliminated from the bill.

I hope I get some support from the 66 Senators.

Senator HART?

Senator HART. Mr. Mizell, your presentation has been lawyerlike and temperate.

Mr. MIZELL. I hope it will help. That is all I can say.

Senator HART. The principal thrust of your argument, I take it, is that illiterates, white or Negro, should not be voting in Alabama and the State has the right to apply that rule?

Mr. MIZELL. That is constitutional and historically so; yes, sir. That is not up to me. That is up to the legislature and to the people in the exercise of that right. Of course, it is my personal opinion that this

should be and I think that our country was founded on that basis of representative government, rather than pure democracy.

Senator HART. How frequently does the Alabama Legislature meet?

Mr. MIZELL. It looks like it meets rather in permanent session. By law, however, they meet in biennial sessions and subject to special sessions upon the call of the Governor, who must state the purpose of the call, I mean of the meeting in the call of the legislature and legislation not included within the scope of the call requires a two-thirds vote, I believe of the legislature.

Senator HART. So that under the constitution, the Alabama Legislature meets on even-numbered years?

Mr. MIZELL. Yes, sir, but as a matter of fact, they have been in session in this quadrennium, this administration, I think in addition to the one regular session, probably five or six or seven special sessions and the next regular session begins in May.

Senator HART. The only question I have, I think, would suggest that I am concerned not so much with the last few years but prior times.

Now, the Supreme Court of the United States outlawed the white primary in 1944?

Mr. MIZELL. Yes.

Senator HART. Alabama, for the first time, posed a literacy test in 1946. What do you think is so severe with people from our corner of the country adding that up to give a very clear answer as to the purpose of the literacy test in Alabama?

Mr. MIZELL. Well, I want to say this, that for many years prior to 19— what did you say it was, 1946?

Senator HART. The Court said you could not run a white primary in 1944, and the legislature said, "Well, we will impose a literacy test," in 1946.

Mr. MIZELL. Prior to that, of course, the State constitution had a provision that anybody who owned 40 acres of land, and it also required a literacy test prior to that. I think the Senator is mistaken about that as I recall.

Senator HART. My information is that Alabama posted its literacy test in 1946 for the first time. I shall be glad to have that corrected.

Mr. MIZELL. I have been advised by Mr. Howell that the requirement was that the voter had, prior to 1946, had to be literate or must own 40 acres of land. In 1946, the alternative of property owning was eliminated.

Senator HART. Run through that again. I think I did not understand the answer.

Mr. MIZELL. Prior to 1946, it was a requirement that a voter be literate and they accomplished this by a subjected test of reading and writing sections of the Constitution, or, in the alternative, if he owned property, 40 acres of land, if he was illiterate but owned that land, he could be registered. In 1946, this alternative of landowning was eliminated, so it was strictly on a literacy basis from then on.

Senator HART. Before 1946, it was a statutory requirement that a voter be literate or the owner of property in that acreage?

Senator KENNEDY. That is my understanding of it; yes, sir.

Senator HART. All right, in 1946, the State legislature amended the law and struck out the property ownership as a qualification for voting?

Mr. MIZELL. It was done by constitutional amendment, by vote of the people.

Senator HART. Then it was not a statutory requirement prior to that if it required a constitutional amendment.

Mr. MIZELL. I think it involved some statute that implemented the constitution, or it may have been directly applied by the boards as a constitutional requirement. Frankly, I am not too familiar with it.

Senator HART. The present state of this record, then—

Mr. MIZELL. In 1946, I was busy in other activities in the United States, a war, getting over it.

Senator HART. But somebody in 1946 had something in mind when they fussed with this test. The purpose would appear to be from the chronological evolution that the purpose was to discriminate—

Mr. MIZELL. Let's face facts, Senator. It is a historical fact, and there is no evidence apparently made to prevent it, that for many years from the period of reconstruction on, there were attempts made in all of the Southern States to limit the voting to the white electors. And it was, of course, successfully done and this was a continuation of that and it was finally eliminated.

Senator HART. Is that not the point, until the Supreme Court struck down the white primary, that was in effect the device to accomplish the purpose? Thereafter, another device was needed and somebody thought the application of this literacy test would serve that purpose. That is the way we read the chronology of the evolution of this.

Mr. MIZELL. Well, that is your interpretation.

Senator HART. That is right.

Senator ERVIN. I would like to ask one question. You are not willing to assume the responsibility for all the inferences which some people north of the Mason-Dixon line may draw about Southern States; are you?

Mr. MIZELL. No. Of course, I am free to admit that under the present circumstances and under present laws, things were done in the past that were impermissible today. And if so, you can say, well, you are condemning people. You are saying they are guilty of this and that. Now you are attempting to propose a bill that is in effect an *ex post facto* law punishing them for what was done 30 or 40 years ago.

Let me, if I may, read into the record the history of the changes of voter registration in Alabama. I would say:

One, that the changes have favored Negro registration in that they have come before similar Federal action. In 1946, the legislature provided two extra registration days per month for all counties at a time when Negro interest was increasing in voting, especially among servicemen returning.

Two, many local boards from 1950 to date have special legislation increasing meeting days and providing clerical help in the counties. Such action has been.

Three, in 1951, the property alternative as a means of qualifying was removed. Sociologists had determined that this requirement, at least the alternative, was one which worked in favor of whites instead of the Negro.

Four, the requirement that applicants must have been gainfully employed the greater part of the year prior to registration was removed. This requirement was considered to be one which worked

more in favor of whites than of Negroes. I do not agree with that conclusion.

Oh, yes. The distinction is, of course, that the requirement favored the whites and the removal favored the Negroes. We want to get straight on that.

Before 1953, the cumulative features of the poll tax, which was a requirement to pay \$1.50 for each year from "21 through 44," regardless of age at the time of registration, was removed.

And of course, that happened. January 1964, the Alabama Supreme Court ordered boards to use literacy and citizenship tests for all applicants, regardless of the registrars personal knowledge as to the literacy of the individual applicant and prescribed uniform tests and procedures for all. Congress, of course, got around to that in July of 1964.

In January 1964, Alabama Supreme Court ordered forms requiring a record to be kept of these tests. In February of 1964, of course, the registrars agreed to receive the new forms and tests in which discontinued use of 1952 application forms that one of the Federal judges said were too onerous and which the Department of Justice strenuously objected to.

Senator ERVIN. Senator Kennedy?

Senator KENNEDY. Mr. Mizell, I would like to develop a line of questioning on the applications that are necessary for citizens of Alabama.

Mr. MIZELL. Yes, sir.

Senator KENNEDY. You have reviewed it, just let me review it with you. If I am mistaken, correct me.

From 1952 through January of 1964, you had the questionnaire you have outlined in your memorandums there, which consisted of five different pages. There were no inserts?

Mr. MIZELL. No, sir. From 1952 until 1964, there was an application for registration which consisted of four pages, but it had considerably more questions in it than the present application form, which was begun to be used in January or February of 1964.

Senator KENNEDY. That is what I was getting at.

Now, in February of 1964, the application changed, and there was provision in the application in 1964 for the inclusion of inserts, as I understand it.

Mr. MIZELL. Yes.

Senator KENNEDY. And inserts were used from February to August?

Mr. MIZELL. One type of insert was.

Senator KENNEDY. One type of insert was used from February to August, and, as I understand it, they were changed monthly.

Mr. MIZELL. Yes, sir.

Senator KENNEDY. Now, in August, the procedure changed?

Mr. MIZELL. No; the procedure did not change. The form of the insert changed. The procedure to use the insert changed.

Senator KENNEDY. Well, now—how did you state it?

Mr. MIZELL. I said the procedure for using the insert changed.

Senator KENNEDY. Did the number of inserts change?

Mr. MIZELL. As far as the voters; no, sir. The number of inserts that were available, I might say, did change. Here is what happened following—

Senator KENNEDY. Let me just ask, as I understand it, although the number of inserts that had to be filled out, the number of those did not change, nonetheless, there was a significant increase in the number of inserts which were available to applicants in the State of Alabama after August 1964? Is that substantially correct?

Mr. MIZELL. Well, that is not quite true. Only one insert was available to each applicant.

Senator KENNEDY. And how many did—how many different—

Mr. MIZELL. Oh, you mean in February? Excuse me.

Senator KENNEDY. Would you read the question?

(The question was read by the reporter.)

Senator KENNEDY. Is that correct?

Mr. MIZELL. Well, the number of available applicants remained constantly. They only had to administer the literacy test—

Senator KENNEDY. Were there approximately 100 different inserts which were available to applicants in the State of Alabama, one of which has to be filled out by any different applicant? Is that correct or is that not correct?

Mr. MIZELL. If I may explain it please, sir. There were 100 different inserts prepared by the Supreme Court and issued to the boards of registrars and pursuant to a court of appeals opinion in the *Ramsay* case, the applicant allowed to choose at random any one of those 100 inserts as his literacy test. So he is only involved with one.

Senator KENNEDY. How many inserts were available to choose from prior to August?

Mr. MIZELL. One.

Senator KENNEDY. So there was an increase—that is right, there was an increase in the total number available to be selected by an applicant after August, is that correct?

Mr. MIZELL. No, sir. I just do not construe it that way. There were more being used in the process but as far as the individual applicant was concerned, the figure remained constantly.

Senator KENNEDY. The figure remained constant, but there was a greater number to be selected from?

Mr. MIZELL. Yes, that is correct.

Senator KENNEDY. Well, then, the number increased, is that correct?

Mr. MIZELL. The number to be selected from increased, yes, sir.

Senator KENNEDY. If you will bear with me for just a minute. I understand these were inserts that were included in those applications. There was an insert No. 3, question 3. "What words are required by law to be on all coins and paper currency of the United States?"

Mr. MIZELL. It may have been anyone of them. I do not know. You have—you may have a point.

Senator KENNEDY. Well, this is one of them. I would just like to review some of these questions which were on these various inserts which I think are of some interest.

Mr. MIZELL. What insert is that we are interested in.

Senator KENNEDY. Insert No. 3.

Mr. MIZELL. Was that the February form or the August form?

Senator KENNEDY. That is in the August form.

Mr. Mizell, I am not going to ask, because we are running out of time. I would like, if I could, just to read in a sampling of some of

the forms or some of the questions which are on these forms, since in your testimony you did at least dwell on the significance and importance of the criteria which are suggested by these forms. I would like to just read into the record some of the questions.

On test No. 3, insert No. 3, the third question: "What words are required by the law to be on all coins and paper currency of the United States?"

Insert 13, question No. 1, "Is to insure domestic tranquillity mentioned as one of the reasons for establishing the Constitution of the United States of America?"

That is a true or false.

Insert 25, the following statement is part of the Constitution: "Trial of all crimes, except in cases of impeachment, shall be by jury." True or false.

On insert No. 26: "The United States Constitution provides that if a person charged in any State with treason, felony or other crimes, shall flee from justice and be found in another State, he shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime." True or false.

Test No. 30: "Who decides how presidential electors are chosen, legislatures or Congress?"

In 57, "Can a person be fined for failing to appear for service on a jury?"

Well, I have others. Would you agree with me that those questions are difficult to answer?

Mr. MIZELL. Not if the answers to those questions are written on the very page in which the question was stated.

Senator KENNEDY. Now, as I understand it, and you are the authority on these applications, those are personal knowledge questions the answers to which are not written on the page.

Mr. MIZELL. I do not know. I do not know what you are looking at, Senator.

Senator KENNEDY. Well, to refresh your recollection, we both agreed that there were some 100 inserts from which an applicant would select 1. They are available to the applicants registering in the State of Alabama, after August 1964. The numbers that I have read, first of all indicated the particular number of the various inserts, because they are listed by numbers. They were 3, 13, 25, 26, 30, and 57. That number indicates the number of the test or the number of the particular insert. Granted, they were selected at random. These are personal knowledge questions in which the applicant must be able to answer a series of questions. He must be able to answer successfully, as I understand it, six out of the eight.

I am just asking your opinion, since you expressed an opinion in your testimony, as to the difficulty of the various tests that were used in Alabama, whether you thought those questions were difficult questions?

Mr. MIZELL. As I said in the statement, if they are made exclusively from the person's knowledge, like the New York question, they would be difficult.

Senator KENNEDY. These are exclusive.

Mr. MIZELL. But if they are made with reference to an applicant's ability to read the answers that are set forth immediately preceding the question, then I would say they are not difficult.

Senator KENNEDY. Well, now, since you are once again the authority, part 3, which I am reading from the application blank, says that this questionnaire shall consist of one of the forms which are inserted and are herein below set out. The insert shall be fastened to the questionnaire; the questions set out in the insert shall be answered according to the instructions therein set out. Each applicant shall demonstrate ability to read and write as required by the constitution of Alabama, as amended, and no person shall be considered to have completed this application, nor shall the name of any applicant be entered upon the list of registered voters of any county until after such inserted part III of the questionnaire has been satisfactorily completed and signed by the applicant.

That to me seems to be quite clear as to the instructions. I am asking you as to the degree of difficulty. I think these are difficult questions to answer. There is no provision by which any assistance is given to the applicant. There is a whole host of these questions and I think that they demonstrate the degree of difficulty which I think is of importance in determining whether they are being used to discriminate against individuals, particularly since they have been adopted, in developing the point that Senator Hart made, in August 1964.

You respectfully disagreed with Senator Hart.

Mr. MIZELL. I would like to introduce as an exhibit in order that it be more certain—

Senator KENNEDY. We have an application of April 1964, where—George Carver Williams, who completed 12 years, according to his application, at the Hudson High School in Selma, Ala., 1 year at the Selma University, had a sufficient degree of competency to enter the U.S. Air Force and is currently serving at Eglin Air Force Base in Florida, was able to pass the test for such admission to the Air Force, but was excluded from registering on the basis of a mispronunciation of the words "construe, prejudice, convention, constitution, and electors." And the misspelling of tranquility.

(The application referred to follows.)

ReflectedFeb - Aug form
using 14301 +
taken April 1964S. J. J.

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APPLICATION FOR REGISTRATION, QUESTIONNAIRE AND OATHS

PART I

(This is to be filled in by a member of the Board of Registrars or a duly authorized clerk of the board. If applicant is a married woman, she must state given name by which she is known, maiden surname and married surname, which shall be recorded as her full name.)

Full Name: William George Carroll
 Date of Birth: 14 February 1948 Sex: Male Race: Negro
 Residence Address: 134-C George Washington Court Home, Selma, Alabama
 Mailing Address: 134-C George Washington Court Home, Selma, Alabama
 Voting Place: Precinct 26 Ward _____ District _____
 Length of Residence: In State 21 years County 21 years
 Precinct, ward or district 21 years
 Are you a member of the Armed Forces? Yes
 Are you the wife of a member of the Armed Forces? No
 Are you a college student? No If so, where _____
 Have you ever been registered to vote in any other state or in any other county in Alabama? No If so, when and in what state and county and, if in Alabama, at what place did you vote in such county? _____

Highest grade, 1 to 12, completed 12 Where R. B. Hudson High School - Selma, Ala.
 Years college completed 1 Where Selma University, Selma, Alabama

PART II

(To be filled in by the applicant in the presence of the Board of Registrars without assistance)

I, George C. Williams, do hereby apply to the Board of Registrars of Dallas County, State of Alabama, to register as an elector under the Constitution and laws of the State of Alabama and do herewith submit my answers to the interrogatories propounded to me by the board.

George C. Williams
 (Signature of Applicant)

- Are you a citizen of the United States? Yes
 - Where were you born? Selma, Dallas County, Alabama
 - If you are a naturalized citizen, give number appearing on your naturalization papers and date of issuance No
 - Have you ever been married? No If so, give the name, residence and place of birth of your husband or wife _____
- Are you divorced? No

8. List the places you have lived the past five years, giving town or county and state 124-C George
Washington, Cane Run, Selma, Alabama
9. Have you ever been known by any name other than the one appearing on this application? No If so, state what name
10. Are you employed? Yes If so, state by whom. (If you are self-employed, state this) United States
Air Force
11. Give the address of your present place of employment Edlin Air Force Base, 3 miles
12. If, in the past five years, you have been employed by an employer other than your present employer, give name of all employers and cities and states in which you worked
13. Has your name ever been stricken for any reason from any list of persons registered to vote? No If so, where, when, and why?
14. Have you previously applied for and been denied registration as a voter? No If so, when and where?
15. Have you ever served in the Armed Forces? Yes If so, give dates, branch of service, and serial number
23 January 62 - United States Air Force AF14261222
16. Have you ever been dishonorably discharged from military service? No
17. Have you ever been declared legally insane? No If so, give details
18. Give names and addresses of two persons who know you and can verify the statements made above by you relative to your residence in this state, county and precinct, ward or district Mrs. Leon May, 1611-A Jones
Ch., Selma, Alabama Mrs. Kerstin Williams, 124-C D.A.C. Rd., Selma, Ala.
19. Have you ever seen a copy of this registration application form before receiving this copy today? No If so, when and where?
20. Have you ever been convicted of any offense or paid any fine for violation of the law? No (Yes or No) If so, give the following information concerning each fine or conviction: charge, in what court tried, fine imposed, sentence, and if pardoned, state when, and if pardoned, state when. (If fine is for traffic violation only you need write below only the words "traffic violation only.")

(Remainder of this form is to be filed out only as directed by an individual member of the Board of Registrars.)

PART III

Part III of this questionnaire shall consist of one of the forms which are Insert Part III on herein being set out. The insert shall be attached to the questionnaire. The question set out on the insert shall be answered according to the instructions therein set out. Each applicant shall demonstrate ability to read and write as required by the Constitution of Alabama, as amended, and no person shall be considered to have completed this application, nor shall the name of any applicant be entered upon the list of registered voters of any county until after such person's Part III of the questionnaire has been satisfactorily completed and signed by the registrars.

1964
Feb - Aug Form
April 1st

INSERT PART III (3)

(The following questions shall be answered by the applicant without assistance.)

1. In what town or city is the courthouse located in this county? Adams, Alabama
2. How many stars are there in the United States Flag? 50
3. What is the lawmaking body of Alabama called? The Legislature
4. Those who shall be convicted of any crime punishable by imprisonment in the state penitentiary shall be disqualified from voting in Alabama. (True or false) True

INSTRUCTIONS "A"

The applicant will complete the remainder of this questionnaire before a Board member and at his instructions. The Board member shall have the applicant read any one or more of the following excerpts from the U. S. Constitution using a duplicate form of this Insert Part III. The Board member shall keep in his possession the application with its Inserted Part III and shall mark thereon the words missed in reading by the applicant.

EXCERPTS FROM THE CONSTITUTION

1. "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state."
2. "The ratification of the conventions of nine states, shall be sufficient for the establishment of this constitution between the states so ratifying the same."
3. "The electors shall meet in their respective states, and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves."
4. "The person having the greatest number of votes as vice-president, shall be the vice-president, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the senate shall choose the vice-president; a quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice."

INSTRUCTIONS "B"

The Board member shall then have the applicant write several words, or more if necessary to make a judicial determination of his ability to write. The writing shall be placed below so that it becomes a part of the application. If the writing is illegible, the Board member shall write in parentheses beneath the writing the words the applicant was asked to write.

HAVE APPLICANT WRITE HERE, DICTATING WORDS FROM THE CONSTITUTION.

Establish, qualifications, government, tranquility, justice,

Signature of Applicant: George C. Williams

Accepted The
BS Educ.

213 APPLICATION FOR REGISTRATION, QUESTIONNAIRE AND OATH #36
Richie James Sherman Jackson do hereby apply to the Board of Registrars of
Dallas County, State of Alabama, to register as an elector under the Constitution and laws of the State
 of Alabama, and do herewith submit answers to the interrogatories contained in and by said Board.

Richie James Jackson
 REGISTRAR

QUESTIONNAIRE

1. State your name, the date and place of your birth, and your present address. Richie James Jackson
August 30, 1932, Mobile, Alabama - 1514 Sapsal St.
Seena, Alabama

2. Name some of the duties and obligations of citizenship. to obey the laws of the city,
State and Country.

(a) Do you regard these duties and obligations as having priority over the duties and obligations you owe to any other member
 organization when they are in conflict? No

3. Give the names and post office addresses of two persons who have personal knowledge of your general bona fide residence at
 the place as stated by you. Mr. E. D. Meyer, Mr. W. B. Perkins -
1200 S. Main St. - Seena

4. Are you married or single? Married If married, give name, residence and place of birth of your husband or wife, as the
 case may be. Dr. Sullivan Jackson - 1514 Sapsal St. (Birth Place)
Seena, Ala.

(b) Give the names of the places, respectively, where you have lived during the last five years and the names or names by which
 you have been known during the last five years. Seena, Ala. - Seena, Ala.

5. If you are self-employed, state the nature of your business. Not employed

(c) If you have been employed by another during the last five years, give the name of your employer and the name
 or names of each employer or employers and his or their addresses. Seena County, Alabama
Educative.

7. If you claim that you are a bona fide resident of the State of Alabama, give the date on which you claim to have become such bona fide resident: 8/30/32 (a) When did you become a bona fide resident of Alabama

County: 1937 (b) When did you become a bona fide resident of that or another

8. If you intend to change your place of residence prior to the next general election, state the date: No

9. Have you ever been accepted for and been denied registration as a voter: yes (a) If so, give the facts: I do not know why I was denied registration

10. Has your name been previously stricken from the list of persons registered: No

11. Are you now or have you ever been a drug addict or an habitual drunkard: No (a) If you are or have been a drug addict or an habitual drunkard, explain as fully as you can:

12. Have you ever been legally declared insane: No (a) If so, give details:

13. Give a brief statement of the extent of your education and business experience: Spalding High School diploma, A.B.S. Degree in Secondary Education

14. Have you ever been charged with or convicted of a felony or crime or offense involving moral turpitude: No (a) If so, give the facts:

15. Have you ever served in the Armed Forces of the United States Government: No (a) If so, state when and for approximately how long:

16. Have you ever been expelled or dishonorably discharged from any school or college or from any branch of the Armed Forces of the United States, or of any other country: No (a) If so, state the facts:

17. Will you support and defend the Constitution of the United States and the Constitution of the State of Alabama: yes

18. Are you now or have you ever been affiliated with any group or organization which advocated the overthrow of the United States Government or the government of any State of the United States by unlawful means: No (a) If so, state the facts:

19. Will you bear arms for your country when called upon by it to do so: yes (a) If you answer no, give reasons:

20. Do you believe in free elections and rule by the majority: yes

21. Will you give aid and comfort to the enemies of the United States Government or the government of the State of Alabama: No, will not

Repeated

1952-1964 form

45 APPLICATION FOR REGISTRATION. QUESTIONNAIRE AND OATH

24

I, Memmie H. Skilton, do hereby apply to the Board of Registrars of Dallas County, State of Alabama, to register as an elector under the Constitution and laws of the State of Alabama, and do herewith submit answers to the interrogatories propounded to me by said Board.

Memmie H. Skilton
Name of Applicant

QUESTIONNAIRE

1. State your name, the date and place of your birth, and your present address: Memmie H. Skilton
8-17-04 Sumner South Ala. Wilford County
1928 P.O. Box 1000 Selma, Ala.

2. Give a brief statement of the extent of your education and business experience: High School Graduate I have been a
tailor for 10 years

3. Have you ever been charged with or convicted of a felony or crime or offense involving moral turpitude? No (a) If so, give the facts: _____

4. Have you ever served in the Armed Forces of the United States Government? No (a) If so, state when and for approximately how long: _____

5. Have you ever been expelled or dishonorably discharged from any school or college or from any branch of the Armed Forces of the United States, or of any other country? No (a) If so, state the facts: _____

6. Will you support and defend the Constitution of the United States and the Constitution of the State of Alabama? Yes

7. Are you now or have you ever been affiliated with any group or organization which advocated the overthrow of the United States Government or the government of any State of the United States by unlawful means? No (a) If so, state the facts: _____

8. Will you bear arms for your country when called upon by it to do so? Yes (a) If you answer so, give reasons: _____

9. Do you believe in free elections and rule by the majority? Yes

10. Will you give aid and comfort to the enemies of the United States Government or the government of the State of Alabama? No

11. Repeat some of the duties and obligations of citizenship: No Honor, Obedience
Protect the Government

(a) Do you regard these duties and obligations as having priority over the duties and obligations you owe to any other secular organization when they are in conflict? Yes

12. Give the names and post office addresses of two persons who have present knowledge of your present bona fide residence at the place as stated by you: E. H. Meas 1231 Franklin St

Selma, Ala Field W. Williamson 229 Philpot
Ala Selma, Ala

(13. Are you married or single? Mar (a) If married, give name, residence and place of birth of your husband, or wife, as the case may be: Nathan W. Hocking County

14. Give the names of the places, respectively, where you have lived during the last five years; and the name or names by which you have been known during the last five years: 1908 Philpot, Ala

Selma, Ala Ernest H. Shelton

15. If you are self-employed, state the nature of your business: Tailor

(a) If you have been employed by another during the last five years state the nature of your employment and the name or names of each employer or employers and his or their address:

16. If you claim that you are a bona fide resident of the State of Alabama, give the date on which you claim to have become such bona fide resident: 5-17-1917 (a) When did you become a bona fide resident of Long Beach, Ala

County: Wilcox (b) When did you become a bona fide resident of It Ward or precinct

17. If you intend to change your place of residence prior to the next general election, state the facts:

18. Have you previously applied for and been denied registration as a voter? Yes (a) If so, give the facts:

When I was 21 years old

19. Has your name been previously stricken from the list of persons registered? No

20. Are you now or have you ever been a dope addict or an habitual drunkard? No (a) If you are or have been a dope addict or an habitual drunkard, explain as fully as you can:

21. Have you ever been legally declared insane? No (a) If so, give details:

Mr. MIZELL. If the Senator would note the date on it, that is an old test. Those have been ruled out and cannot be used anymore and are not being used.

Senator KENNEDY. You have the new ones with the hundred inserts now.

Mr. MIZELL. Yes, sir, I want to introduce them, too. I want to introduce as an exhibit 1 of the inserts, part III, that is used in connection with the tests since August of 1964.

I want also to say that there has been no evidence that these literacy tests are being used or administered on a discriminatory basis.

For instance, in this one I am going to hand to the reporter, there is this statement "excerpts from the Constitution." Part 4, "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

The second question is "Involuntary servitude is permitted in the United States upon conviction of a crime. True or False." All you have to do is read the answer and answer it.

(The document just referred to follows:)

INSERT PART III (7)

INSTRUCTION "A"

Immediately after this insert has been selected, applicant shall turn it over and write on the back as instructed by the Board member. The Board member shall read aloud to the applicant from a duplicate form of this Insert Part III one or more of the excerpts from the Constitution which appear below, and the applicant shall write on the back hereof that part of the Constitution which is thus read to him. This shall be done before applicant completes any other part of the insert. Applicant is not to be allowed to copy from the insert or elsewhere, that part of the Constitution which is read to him, but shall write the words read to the applicant by the Board member.

INSTRUCTION "B"

(After complying with Instruction "A," applicant will complete remainder of insert. Applicant shall answer the following questions in writing and without assistance:)

1. What is the amount of the annual poll tax levy in Alabama on each taxpayer who is not exempt by law? _____
2. Of which branch of state government is the speaker of the house a party? _____ executive _____ legislative _____ judicial
3. Name one of the grounds on which a person who is otherwise qualified to vote cannot be denied the right to vote. _____
4. Capital punishment is the giving of a death sentence. (True or False) _____

EXCERPTS FROM THE CONSTITUTION

Part 1. In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and the congress may by law provide for the case of removal, death, resignation or inability, both of the president and vice-president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

Part 2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the supreme court shall have original jurisdiction.

Part 3. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make.

Part 4. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

INSTRUCTION "C"

(After applicant has read, not aloud, the foregoing excerpts from the Constitution, he will answer the following questions in writing and without assistance:)

1. In case the president is unable to perform the duties of his office, who assumes them? _____
2. "Involuntary servitude" is permitted in the United States upon conviction of a crime. (True or False) _____
3. If a state is a party to a case, the constitution provides that original jurisdiction shall be in _____
4. Congress passes laws regulating cases which are included in those over which the United States Supreme Court has _____ jurisdiction.

I hereby certify that I have received no assistance in the completion of this citizenship and literary test, that I was allowed the time I desired to complete it, and that I waive any right existing to demand a copy of same. (If for any reason the applicant does not wish to sign this, he must discuss the matter with the board of registrars.)

Signed: _____

(Applicant)

Mr. MIZELL. We will say this, that those tests, Senator, have been ruled out by the courts and the boards are not using them. That is the reason. They are not presently used in any area that is being litigated.

Senator KENNEDY. As I understand it, there is currently a case by the *United States of America v. Agnes Badgett* on that very point.

Mr. MIZELL. That is correct, in which they attacked the use of that as being per se discriminatory. That is in the court and if the courts uphold it, then of course, it is out.

Senator KENNEDY. Well, you say in effect, this case makes very little sense, then, because they are not using any of these forms now in Alabama?

Mr. MIZELL. In substance, that is true; yes, sir. I think they are just busy making litigation if you want to know the truth.

Senator KENNEDY. How many different counties, to your own knowledge, either are or are not using these tests now?

Mr. MIZELL. Well, I am just personally familiar with those that are experiencing litigation, shall we say? I will say this, that there has been intensive and exhaustive investigations by the Department of Justice, in which I think the Attorney General testified before one of these committees, saying that the job imposes awesome requirements—6,000 man-hours just to analyze the records. Despite all the investigations throughout the State, where these tests were used all over the State, he has only found enough evidence to justify litigation in about eight or nine counties, as I recall.

In that connection, the committee—

Senator KENNEDY. It is my understanding that these inserts have been abolished in Dallas County, Selma, Perry County, Montgomery County; Dallas County under the court order of the U.S. District Court, Southern District for Alabama, February 4, 1965, Perry County March 16, 1965, in court order from the U.S. southern district, and Montgomery County was in late 1964 or early 1965 by a court order of the middle district of Alabama.

It is also my understanding that this case which I mentioned, the *United States of America v. Agnes Badgett*, is being brought in order to eliminate the test throughout the State of Alabama.

Mr. MIZELL. I think that is the purpose; yes, sir.

Senator KENNEDY. Therefore, it is somewhat disturbing to me to understand why you suggest that you did not feel that those were being used now.

Mr. MIZELL. Because I do not agree with the Department of Justice. We are contesting that case.

Senator KENNEDY. But you are not disagreeing that they are using them; are you?

Mr. MIZELL. They are not using them in the places that you mentioned. They are not using them in quite a number of other counties, they—

Senator KENNEDY. But you are not questioning that they are using them, as I understand it, because you are defending them. Are you questioning that they are using them in some places?

Mr. MIZELL. Sir?

Senator KENNEDY. Are you questioning that they are being used in a number of different counties, now?

Mr. MIZELL. No, they are perhaps being used in some counties.

Senator KENNEDY. Could I ask just one final question? How do you, recognizing that the Supreme Court of Alabama establishes certain procedures—let me start first of all this way.

You are familiar with the various sections of the legislation which we are considering here, S. 1564.

Mr. MIZELL. Familiar with what?

Senator KENNEDY. The sections of the legislation which we are considering here, S. 1564?

Mr. MIZELL. I don't know what—whether I am familiar with it as the Senator, but I will try to answer his questions.

Senator KENNEDY. As I understand it, the Supreme Court of Alabama has been the one that established certain procedures by which the literacy test will be given in Alabama?

Mr. MIZELL. Well, that is pursuant to constitutional requirement of the State.

Senator KENNEDY. Now, do you feel that section 8 of this legislation is sufficiently broad to include the Supreme Court of Alabama under its definition?

Mr. MIZELL. If it is, it is bad legislation. That is all I can say.

Senator KENNEDY. Do you know what section 8 suggests?

Mr. MIZELL. Let me look at it and see. I do not recall it from memory, no, sir.

Senator, I would not attempt to construe that section for you. I think it is a matter the courts can decide whether or not it is broad enough.

Senator KENNEDY. The point, Mr. Chairman, I respectfully submit, is that this section 8 says:

Whenever a State or political subdivision for which determinations are in effect under section 3(a) shall enact any law or ordinance imposing qualifications or procedures for voting different than those in force and effect on November 1, 1964, such law or ordinance shall not be enforced and until it shall have been finally adjudicated by an action for declaratory judgment brought against the United States in the District Court for the District of Columbia that such qualifications or procedures will not have the effect of denying or abridging rights guaranteed by the 15th amendment. All actions hereunder shall be heard by a three-judge court and there shall be a right of direct appeal to the Supreme Court.

I am just sincerely inquiring whether the procedures which are established by the Supreme Court of Alabama would be included under the State or political subdivision in which determinations are in effect under section 3(a), and therefore, you might have the State of Alabama suggesting changes in the procedures for applicants that would fall within the State of Alabama and not fall within the definition of section 8.

Senator ERVIN. It is clear in my mind that the State of Alabama would be deprived of its legislative powers to make any changes in procedures or any changes in voting qualifications until they could get the blessing of the Federal district court sitting in the District of Columbia 1,000 miles away.

Senator KENNEDY. You have mentioned that several times. I do not question your interpretation in the light of that spirit. The question is whether the Supreme Court of Alabama would fall under this, as the State or political subdivision. I just raise it now.

Senator ERVIN. The Supreme Court of Alabama is one of the official parts of the government of the State of Alabama and it would be included. I do not think there could be any doubt about that.

In other words, they would have a legislative paralysis, notwithstanding the fact that the Constitution of the United States gives them the power to legislate. They would have to come a thousand miles to get permission to legislate from a Federal judge, to get permission to exercise their power under the Constitution to legislate. I think that is clear as the noonday sun above the clouds.

Senator KENNEDY. I want to ask this question of the witness because it says enacting a law or ordinance and I do not interpret the Supreme Court of Alabama as having that power. I thought the witness might express an opinion on that subject.

But I appreciate your appearance here, Mr. Mizell.

Mr. MIZELL. If I may just add one thing. I do not want to belabor that point, but the changes, of course, in these inserts and the application were made consistently to conform with Department of Justice objections, with court rulings made by Federal district courts, the Fifth Circuit Court of Appeals, and also in the last instance in August to conform with the Civil Rights Act of 1964.

Senator KENNEDY. Mr. Chairman, I would like to ask, if I could, that this enclosure, which includes the applications of 1952 and the—

Senator ERVIN. I think you are probably right under this phrase "enacting a law or ordinance." I want to apologize to you. The Supreme Court of Alabama does not have the power to enact laws and ordinances. It would be rather unusual under the doctrine of separation of powers. Your interpretation is that maybe the Supreme Court of Alabama could hand down a decision. I do not believe they could make election laws. But I think your interpretation is quite right.

Senator KENNEDY. As I understand it, they have laid down some regulations as far as the application of this which could be and have governed to supervise—

Mr. MIZELL. They are carrying out a constitutional mandate and the court, in passing on that amendment, the Supreme Court of Alabama recognizes that it was not strictly a judicial function, but said that it emanated from the people and it was required of that State agency and they complied with it in that sense.

Senator KENNEDY. I would like, Mr. Chairman, to ask, that included in the appendix of the record, the applications that were used during the period from 1952 to 1964 and then 1964 up to the present time, the inserts and the answer sheets as well, be included in the appendix to this report.

Mr. MIZELL. We might say there are no official answer sheets. They have been furnished, the board has furnished some suggestions as to answers. You get off in that type of thing, of course, and you are litigating the issues which right now are going on in the courts of Alabama.

We would like to introduce—

Senator KENNEDY. Does the board of registrars know the answers to all these questions?

Mr. MIZELL. I reckon they can read, yes, sir.

Senator KENNEDY. Mr. Chairman, I would include after the test the answer sheets which have been made available by the chairman of the board of registrars for use only by the board of registrars and the supplementary sheets as of September 14, 1964.

Mr. MIZELL. Senator Fong, I believe it was, asked that some of the New York literacy tests that I mentioned be included in the record. Here are copies of those.

NEW YORK STATE REGENTS LITERACY TEST

(To be filled in by the candidate in ink)

Write your name here _____
First name _____ Middle name _____ Last name _____

Write your address here _____

Write the date here _____
Month _____ Day _____ Year _____

Read the paragraph below and then write the answers to the questions. Read it as many times as you need to.

Alexander Hamilton

About 1753, Alexander Hamilton was born in the West Indies. When he was 12 years old his mother died. In 1773, Hamilton entered King's College in New York City. He soon learned of the difficulty the colonies were having with England. He made speeches and wrote articles that favored the colonists. When war started, Hamilton joined Washington's army as a captain. After the war, each state sent representatives to Philadelphia to discuss the plan for what to do with their new freedom. New York sent Alexander Hamilton to the convention. At the convention he helped write the Constitution. This Constitution became effective in 1789. Under President Washington, Hamilton was made Secretary of the Treasury. In 1804, Hamilton used his influence to keep Aaron Burr from becoming Governor of New York State. Burr challenged Hamilton to a duel. Although Hamilton was opposed to dueling on religious grounds, he accepted. In July 1804, he was shot and killed by Burr.

The answers to the following questions are to be taken from the above paragraph.

- Sample: About what year was Alexander Hamilton born? 1753
1. Where was Alexander Hamilton born? _____
2. At what age did Hamilton enter King's College? _____
3. What was the name of the college which Hamilton entered? _____
4. What rank did Hamilton hold when he joined Washington's army? _____
5. In what year did the Constitution become effective? _____
6. What is the name of the man Hamilton blocked from being Governor of New York State? _____
7. On what grounds was Hamilton opposed to dueling? _____
8. In what year did Hamilton die? _____

(To be filled in by the examiner)

- Number of answers correct _____
Candidate's name, F. records, F. 104-105
- Place where examination was held _____
The New District _____
- Signature of County Clerk _____
by signature of candidate
- Signature of Elections Inspector _____
- This form and inspection will return all material to the County Board of Elections within 2 days after election day.
- This examination should not be used after September 30, 1904.

BEST AVAILABLE COPY

NEW YORK STATE REGENTS LITERACY TEST

1962-64 — Test 2

(To be filled in by the candidate in ink)

Write your name here.

First name

Middle initial

Last name

Write your address here.

Write the date here.

Month

Day

Year

Read the paragraph below and then write the answers to the questions. Read it as many times as you need to.

Miles Standish, Soldier

Miles Standish was born in England about 1584. When he grew up he earned his living as a soldier. When the Pilgrims were planning to come to America they asked Miles Standish to come with them. He was to help protect them from the Indians. The *Mayflower* reached America in November 1620. The Pilgrims found a sheltered harbor and founded a settlement which they named Plymouth. Miles Standish directed the men in building cabins for shelter and a common house to store food and ammunition. Because of the cold weather, only twenty men stayed ashore. The women, the children and the other men lived on the ship during the first few weeks. When the *Mayflower* left for England in April, Miles Standish asked the Pilgrims if any of them wanted to go back. But the Pilgrims had found freedom so they all remained.

The answers to the following questions are to be taken from the above paragraph.

Sample: In about what year was Miles Standish born? 1584

1 In what country was Miles Standish born?

2 How did he earn his living?

3 Who was to help protect the Pilgrims from the Indians?

4 What was the name of the ship on which Miles Standish came to America?

5 In what year did he come to America?

6 What did the Pilgrims call the place where they landed in America?

7 How many men stayed ashore when the Pilgrims first arrived?

8 Where did the women and children stay during the first few weeks?

(To be filled in by the examiner)

Number of answers correct

Candidate's rating: P (passing), F (failing)

Place where examination was held

City, Village or Town

County

Certificate of literacy was

(Marked or delivered in person)

to successful candidate.

Examiner's signature

Title

Examiner will return all material previously delivered by local superintendent to the superintendent or his representative within 2 days after the last day on which examination has been conducted.

This examination should not be used after September 30, 1964.

NEW YORK STATE KNIGHTS LITERACY TEST

1653-64 - Test 1

(To be filled in by the candidate in ink)

Write your name here _____
First name Middle Initial Last name

Write your address here _____

Write the date here _____
Month Day Year

Read the paragraph below and then write the answers to the questions. Read it as many times as you need to.

Washington Irving

Washington Irving was born in New York City in 1783. He studied for the law profession, but decided on a career as a writer. In 1809, he finished *Diedrich Knickerbocker's History of New York*. It was a story of the times when New York was ruled by the Dutch. Washington Irving went to Europe in 1815. He stayed there for 17 years. In 1820, he wrote *The Sketch Book*. Irving wrote it under the pen name of Geoffrey Crayon. It contains a famous story called *The Legend of Sleepy Hollow*. In 1842, Washington Irving was appointed United States Ambassador to Spain. In 1846, he returned to the United States and went with an Indian Commission to Fort Gibson on the Arkansas River. Later he retired to "Sunnyside," his country home in Tarrytown, New York. He died there in 1859 and was buried in nearby Sleepy Hollow cemetery.

The answers to the following questions are to be taken from the above paragraph.

Sample: In what year was Washington Irving born? 1783

1. In what city was Washington Irving born?

2. What career did he decide on?

3. In the time of *Diedrich Knickerbocker's History of New York*, who ruled New York?

4. What did Irving write in 1820?

5. Under what pen name was it written?

6. To which fort did Washington Irving go with an Indian Commission in 1846?

7. In what year did Washington Irving die?

8. In what cemetery is he buried?

(To be filled in by the examiner)

Number of answers correct _____

Candidate's name, if (passed), F (failed)

Place where examination was held _____
County

Certificate of literacy was _____ to successful candidate

(Marked as delivered in person)

Signature of election in person _____

Election inspectors will return all material to the County Board of Elections within 2 days after election day.

This examination should not be used after September 30, 1964

BEST AVAILABLE COPY

Senator ERVIN. It is interesting to me that some of the Congressmen from districts in New York County are very diligent in an effort to deny North Carolina its sovereignty because only 51.8 percent of North Carolina's adult population voted in the last presidential election and yet they are elected from districts where the vote is only 51.3 percent of their total adult population.

Mr. MIZELL. In one of the counties, the court sitting—

Senator ERVIN. I envy people sometimes who worry about sins far away from home because it acts as an opiate and blinds them to conditions existing on their own doorstep. It is a whole lot easier to try to reform people far away from home than it is to reform your own constituents.

Mr. MIZELL. Yes. I want to call the committee's attention, if I may—

Senator ERVIN. Both those that Senator Kennedy mentioned and those that you mentioned will be accepted and printed in the record.

(The documents referred to will be included in the appendix of the record.)

Senator KENNEDY. Mr. Mizell, as I understand it, you are speaking in behalf of the board of registrars down there today. Is that correct?

Mr. MIZELL. Well, I said in the beginning that I am an attorney for some of the boards of registrars; yes, sir. I also might say that I am on the State Democratic executive committee of Alabama and have been for 18 years.

I also would like to point out to the committee one case where a Federal judge, Groomes, held that although the board was using this insert part III that Senator Kennedy has mentioned, they found that it was not used for the purpose of rejecting applicants for registration. Therefore, they discharged the contempt proceeding against them.

That is quite often the case, that where it is being used, no one is rejected on the basis of those, wherefore it is questioned. They just do not use it, period.

Senator KENNEDY. Do you have any knowledge yourself about the numbers of citizens who are white and nonwhite of the age of 21 years or older in different counties in Alabama?

Mr. MIZELL. I could not call it offhand, no, sir.

Senator KENNEDY. Do you have any figures that are available? Did you bring any figures that would indicate the registration by counties in the State of Alabama?

Mr. MIZELL. No, sir.

Senator KENNEDY. The overall figures?

Mr. MIZELL. Well, I think I said in there approximately 123,000 adult persons are registered. I think the total registration is around 1 million.

Senator KENNEDY. Do you have any figure on registration by counties?

Mr. MIZELL. No, sir, I do not have.

Senator KENNEDY. Do you know of any breakdown by counties? How do the registrars keep their books? Do they keep them by counties?

Mr. MIZELL. Well, actually, I do not believe there has been any centralized repository in the State of that data. But, at the present time, it is my information that this information is being compiled but is not completed.

Senator KENNEDY. Has it been compiled?

Senator ERVIN. It is a little past our regular quitting time. Do you have to catch a plane this afternoon?

Mr. MIZELL. Yes, sir, in addition to that, I have some other appointments I hope to meet, with the permission of the committee.

Senator ERVIN. We had better proceed, then.

Mr. MIZELL. Mr. Chairman, would it be permissible for Mr. Howell to assist this to make my statement of about 2 minutes and then dismiss us?

Senator ERVIN. You have not finished yourself yet.

Mr. MIZELL. Well, I will, if I may, yield and grant to him 2 minutes time.

Senator ERVIN. You are still under examination.

Senator KENNEDY. Mr. Chairman, I would like to, on the question of the figures, I know that I would like to ask unanimous consent for the Alabama figures as obtained by the Civil Rights Commission be included in the record.

Senator ERVIN. I hope they are more accurate than those for North Carolina in some respects. Because in this report, "Civil Rights 1963," they say that it is indicated that Graham County, N.C., is discriminating on the basis of race and color in voting rights of citizens and nobody lives in Graham County who is nonwhite.

Yes, they can be included.

(The information referred to follows:)

Alabama (1984)

County	Voting age population	Number registered	Percent registered	Percent of total voting age population registered
Autauga				60.4
White	6,838	4,991	73.0	
Nonwhite	3,681	50	1.4	
Baldwin				78.9
White	23,296	20,021	90.0	
Nonwhite	4,527	1,100	24.3	
Barbour				57.6
White	7,338	7,107	96.9	
Nonwhite	5,787	450	7.8	
Bibb				98.3
White	5,807	7,192	+100.0	
Nonwhite	1,990	475	23.9	
Blount				84.5
White	14,308	12,000	87.7	
Nonwhite	578	160	27.7	
Bullock				51.2
White	2,387	2,800	96.4	
Nonwhite	4,450	1,200	27.0	
Butler				55.8
White	3,303	7,239	90.6	
Nonwhite	4,620	248	5.1	
Calhoun				55.0
White	44,739	29,000	64.8	
Nonwhite	9,036	2,200	24.3	
Chambers				50.0
White	15,368	10,068	65.6	
Nonwhite	6,497	860	13.1	
Cherokee				72.2
White	8,537	6,438	75.4	
Nonwhite	783	288	36.8	
Chilton				59.7
White	12,951	8,189	63.3	
Nonwhite	1,947	700	35.0	
Choctaw				59.0
White	5,192	5,163	99.4	
Nonwhite	3,982	223	5.6	
Clarke				65.5
White	7,899	8,350	100.0+	
Nonwhite	5,833	650	11.1	
Clay				90.1
White	6,470	6,342	98.0	
Nonwhite	928	320	34.6	
Cleburne				63.0
White	5,870	5,236	89.2	
Nonwhite	355	80	22.8	
Coffee				57.0
White	14,221	9,310	65.5	
Nonwhite	2,955	503	16.9	
Colbert				63.7
White	21,690	16,229	74.8	
Nonwhite	4,675	500	10.7	
Conecuh				59.1
White	5,907	4,335	73.4	
Nonwhite	3,685	400	11.0	
Cook				60.2
White	4,201	3,800	90.5	
Nonwhite	1,794	350	19.5	
Covington				61.0
White	18,446	12,830	69.6	
Nonwhite	2,875	633	22.0	
Crenshaw				65.5
White	6,310	5,452	86.4	
Nonwhite	2,207	492	22.3	
Cullman				76.9
White	25,843	19,350	75.0	
Nonwhite	285	250	87.7	
Dale				64.9
White	14,361	8,894	61.9	
Nonwhite	2,743	794	28.9	
Dallas				63.1
White	14,400	9,463	65.7	
Nonwhite	15,116	330	2.1	
De Kalb				65.4
White	23,573	22,950	97.3	
Nonwhite	441	250	56.7	
Elmore				70.0
White	12,510	11,736	93.7	
Nonwhite	4,908	400	8.1	

See footnotes at end of table.

Alabama (1964)—Continued

County	Voting age population ¹	Number registered ²	Percent registered	Percent of total voting age population registered
Escambia				70.4
White	12,770	11,848	92.6	
Nonwhite	8,685	1,160	20.2	
Etowah				88.8
White	48,565	35,200	72.4	
Nonwhite	7,661	1,800	28.4	
Fayette				100.0+
White	8,377	9,432	100.0+	
Nonwhite	1,291	300	27.9	
Franklin				96.4
White	12,412	11,787	95.0	
Nonwhite	645	500	100.0+	
Geneva				62.6
White	11,857	8,043	70.8	
Nonwhite	1,006	75	4.4	
Greene				88.8
White	1,649	2,306	100.0+	
Nonwhite	6,001	275	8.5	
Hale				82.7
White	3,594	4,824	100.0+	
Nonwhite	6,999	296	3.9	
Henry				68.5
White	5,165	4,968	93.1	
Nonwhite	3,168	508	15.9	
Houston				45.2
White	22,065	12,106	54.8	
Nonwhite	6,999	1,000	14.5	
Jackson				65.4
White	19,298	13,084	67.5	
Nonwhite	1,175	360	29.8	
Jefferson				41.6
White	265,319	180,804	50.9	
Nonwhite	116,160	28,092	20.7	
Lamar				100.0+
White	7,803	8,580	100.0+	
Nonwhite	1,037	300	29.2	
Lauderdale				65.1
White	31,069	21,600	69.5	
Nonwhite	2,736	1,200	32.2	
Lawrence				92.7
White	10,569	11,227	100.0+	
Nonwhite	2,471	500	22.4	
Lee				60.6
White	17,647	11,384	64.9	
Nonwhite	8,918	1,985	22.5	
Limestone				60.6
White	16,173	11,221	69.4	
Nonwhite	3,579	750	20.9	
Lowndes				83.0
White	1,900	2,314	100.0+	
Nonwhite	6,122	0	0.0	
Macon				49.0
White	2,313	3,733	100.0+	
Nonwhite	11,396	3,479	29.2	
Madison				62.2
White	64,516	32,000	55.7	
Nonwhite	10,666	2,000	18.7	
Marion				47.3
White	6,104	5,280	100.0+	
Nonwhite	7,791	265	8.8	
Marion				67.0
White	12,650	7,080	55.7	
Nonwhite	403	400	99.2	
Marshall				79.8
White	26,987	21,925	81.2	
Nonwhite	637	125	19.6	
Mobile				48.0
White	121,569	69,799	57.4	
Nonwhite	50,793	12,917	26.4	
Monroe				68.7
White	6,681	7,017	100.0	
Nonwhite	4,894	325	6.6	
Montgomery				40.1
White	62,911	33,900	52.5	
Nonwhite	30,666	5,800	18.6	
Morgan				64.7
White	30,935	18,000	59.8	
Nonwhite	4,169	1,200	28.9	

See footnotes at end of table.

Alabama (1964)—Continued

County	Voting age population ¹	Number registered ²	Percent registered	Percent of total voting age population registered
Parry				88.1
White	3,441	3,005	87.4	
Nonwhite	5,202	280	5.7	
Pike				59.8
White	7,336	6,511	88.7	
Nonwhite	4,373	438	10.0	
Pike				73.0
White	9,136	10,364	100.0	
Nonwhite	6,359	273	5.1	
Randolph				95.1
White	9,196	9,000	100.0	
Nonwhite	2,365	1,103	46.4	
Russell				84.2
White	13,761	7,520	54.6	
Nonwhite	10,531	800	7.6	
St. Clair				60.0
White	12,244	7,735	63.1	
Nonwhite	2,085	850	41.5	
Shelby				78.6
White	14,771	12,550	84.6	
Nonwhite	2,890	500	17.2	
Sumter				37.0
White	3,061	3,275	100.0+	
Nonwhite	6,814	375	5.5	
Talladega				62.0
White	25,636	13,000	74.1	
Nonwhite	9,333	3,000	32.1	
Tallapoosa				77.7
White	15,310	14,380	97.2	
Nonwhite	4,000	908	18.0	
Tuscaloosa				51.3
White	47,078	26,000	55.2	
Nonwhite	15,333	6,000	39.1	
Walker				75.1
White	26,148	21,002	78.7	
Nonwhite	2,890	1,710	59.2	
Washington				89.2
White	5,295	6,085	100.0+	
Nonwhite (94.7 percent Negro)	2,297	700	30.5	
Wilcox				84.1
White	2,624	2,974	100.0+	
Nonwhite	6,085	0	0	
Winston				100.0+
White	3,559	10,354	100.0+	
Nonwhite (94.8 percent Negro)	47	15	31.0	
Total by color:				
White	1,353,036	985,665	69.2	
Nonwhite	481,520	92,737	19.2	
Total	1,834,556	1,078,402		58.0

¹ 1960 census.² Unofficial figures from the Birmingham News, May 3, 1964.³ If the estimated total population as of Nov. 1, 1964 (published by U.S. Census Bureau in news release dated Sept. 8, 1964), were used as a base, this percentage would be 53.7.

Senator ERVIN. Now, we can hear Mr. Howell.

Senator HART. Before we do that, just let me ask the witness, there is not any dispute that there are more Negroes than whites in Dallas County, Ala.?

Mr. MIZELL. No, I think there are more Negroes than white. Yes, sir.

Senator ERVIN. At the present time, it demonstrates that there are demonstrators there from all over the country.

Mr. MIZELL. Well, they come in from all over.

Mr. HOWELL. Gentlemen, the point, I think, that we have tried to get across here in one way or another is that whereas there are a great many more Negroes than whites in some counties, it is not the fact of

population that accounts for the disparity in those who are registered, nor is it the fact that a literacy test is given other than to the extent that it reflects the actual condition of literacy. The disparity is, statisticwise is represented almost exactly from illiteracy figures. The problem is, therefore, in our judgment one which is educational and one that cannot be approached to the benefit of the State of Alabama or to all of the citizens until we first render that particular situation.

With respect to the question that Senator Kennedy asked, indicating that the literacy test now given in Alabama may be discriminatory, the attack statewide is not based on the ground that it is discriminatory or unconstitutional. The attack is on this ground, that it is different and more difficult than previous tests given and under the Civil Rights Act of 1964, it would therefore be unconstitutional.

Secondly, it is attacked on the ground that it discriminates only to the extent that our educational system has itself discriminated and therefore, those who are not as adequately or as well educated in our Alabama educational system do not have a fair chance in it.

Now, that is a question which is a question of fact. Actually, I think it would surprise any of you to know how equally educational funds are allocated between the white and the Negro. The teachers' salaries are the same. It is true that the educational planes are inadequate and it is also true that there are many thousands of white educational plants that are inadequate. Illiteracy is simply not a Negro problem, it is a white problem also and one which we have very sincere and conscientious efforts toward rendering.

Another point I would like to make is that any discrimination that does exist in any of the counties, if it exists and when it exists, the Department of Justice has been most competent in coming in and making cases and the courts have been more than competent in remedying the situation. What we are pleading against is a statute which will, in many cases, present nine or more counties in the Black Belt of Alabama which will have more illiterates registered than literates.

Proportionately, in other counties, there will be a disproportionate number of persons illiterate.

We are a representative form of government. If literate persons are discriminated against in the elimination of any test, we are willing and we are trying conscientiously to prevent it by establishing statewide standards which can be administered fairly and impartially. As a matter of fact, this most recent test which is now under attack was drawn up and presented to comply with the 1964 Civil Rights Act. The test previously the subjective standards, they were not objective. The applicant was required to read, to write. The oral test was abolished by the 1964 act. The test that was given in February, one a month, that were distributed to the boards, we were undertaking at that time to use this test to establish statistical criteria to determine what type of test a person with a sixth grade education could pass. Those tests and the validity of those tests were destroyed when those tests were subpoenaed into the Federal court and made available to all the people throughout the State, making it possible for them to memorize the questions and answers, which were quite simple.

We believe most sincerely that whereas there are some difficult knowledge questions on this test, it does not preclude changing them and there has certainly been a sincere desire. We have copied all of them which we feel were too difficult. We are trying with the use of the hundred different selection to establish statistical data as to what constitutes a sixth grade education.

I think it is proper to remember that there are many who are qualified to vote who have not passed their sixth grade education, business people, who own their own businesses and positions of responsibility in the community. These people do pass that test. I think it would be significant if you had facts and figures showing those who with fourth grade formal education can pass these tests. Six answers are necessary to the test, but as a matter of fact, if they pass five, they are permitted to come back. They take the test over and over, as often as they like. There is no exclusion on it. In the case of discrimination proven, there are adequate remedies of law. We ask that the Senate of the United States do not impose conditions upon the South which is apt to be divisive and act to the detriment of all the people.

Thank you.

Mr. MIZELL. Mr. Chairman, I want to thank you and the gentlemen of the committee for your courtesy and for your privilege in allowing us to be here. I hope the presentation may be helpful.

We thank you.

Senator ERVIN. I would wish to thank both of you gentlemen for appearing here and thank you particularly for agreeing with me in the belief that a State in which only three-thousandths of 1 percent of the people who take the literacy test fail, is not using that literacy test to deprive anybody of the right to vote.

Mr. MIZELL. Yes, sir.

Senator ERVIN. We will take a recess until 2:45.

(Whereupon, at 12:35 p.m., the committee recessed to reconvene at 2:45 p.m., the same day.)

AFTERNOON SESSION

Senator ERVIN. The committee will come to order.

I put in the record and ask to have it printed as if delivered in person the statement of T. Wade Bruton, attorney general of North Carolina, in opposition to the bill.

(The statement referred to follows:)

STATEMENT OF T. WADE BRUTON, ATTORNEY GENERAL OF NORTH CAROLINA

My name is T. Wade Bruton, and I reside in Raleigh, N.C. I am the duly elected and qualified attorney general of North Carolina and am now performing the duties of that office.

This statement is filed in opposition to S. 1564, which is now pending before the Committee on the Judiciary in the Senate of the United States, the same being entitled: "A bill to enforce the 15th amendment to the Constitution of the United States," and which proposed act recites that it shall be known as the "Voting Rights Act of 1965."

I am authorized to state that His Excellency Dan K. Moore, Governor of North Carolina, joins me in opposition to this proposed act.

It can be easily demonstrated that S. 1564 represents a determined effort on the part of the Congress to take away from the States all power in regard to

suffrage if the Chief Executive of the Nation shall tell the Attorney General of the United States to do so or if the Attorney General of the United States decides to do so on his own motion.

The statement of the Attorney General of the United States does not satisfactorily reconcile the provisions of the 15th amendment with article I, section 2, of the Constitution, which, as to the House of Representatives, provides that "The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature", and this same provision which appears in amendment XVII as to the election of Senators of the United States.

In order to make sure that the Federal Government would have no right to take away the suffrage powers of the States it was provided in article I, section 4, of the Constitution, that "The times, places, and manner of holding elections for senators and representatives shall be prescribed in each State by the legislatures thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators."

No contention is made that the Congress does not have the right to regulate the election of Federal officers but the contention is certainly made that the Congress has no right to interfere with purely State elections so long as reasonable regulations are provided for suffrage eligibility and proper registration which apply equally to all citizens and races.

The proposed bill (S. 1564) outlaws a simple literacy test which exists in this State and which has been approved by the Supreme Court of the United States (*Lassiter v. Northampton County Board of Elections*, 360 U.S. 45, 3 L. ed. 2d 1072, 79 S. Ct. 985) wherein Mr. Justice Douglas, writing for the Court, said:

"The States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised, *Pope v. Williams*, 193 U.S. 621, 633, 48 L. ed. 817, 822, 24 S. Ct. 573; *Mason v. Missouri*, 179 U.S. 323, 335, 45 L. ed. 214, 220, 21 S. Ct. 125, absent of course, the discrimination which the Constitution condemns."

Mr. Justice Douglas, in the above-cited case, refers to *McPherson v. Blacker*, 146 U.S. 1, 39, 38 L. ed. 869, 878, 13 S. Ct. 8, as saying that the right to vote "refers to the right to vote as established by the laws and constitution of the State." It is further stated in this same case that "A State might conclude that only those who are literate should exercise the franchise," and finally it is stated in this same case that "North Carolina agrees. We do not sit in judgment on the wisdom of that policy. We cannot say, however, that it is not an allowable one measured by constitutional standards."

North Carolina has a simple literacy test. It is set forth in article 6, of chapter 163 of the General Statutes. It excludes persons under 21 years of age; idiots and lunatics; persons who have been convicted of crimes wherein imprisonment in the State prison is the punishment. The literacy test says: "Every person presenting himself for registration shall be able to read and write any section of the constitution of North Carolina in the English language. It shall be the duty of each registrar to administer the provisions of this section." Of course, any statute can be unconstitutionally administered but this does not authorize the Federal Government to take over the functions of suffrage. The only time that this statute has not been properly administered appears in the case of *Bazemore v. Bertie County Board of Elections*, 254 N.C. 398, where the election officials attempted to administer the literacy test by dictating or reading the constitutional provision. This erroneous application was promptly reversed by the Supreme Court of North Carolina in the above-cited case. In fact the Attorney General of the United States can only refer to one instance which related to sufficient time for registration and such sufficient time was granted by a Federal district judge. The registration process does not contemplate the sudden appearance of large numbers of applicants but no charge has been made against North Carolina to the effect that it has refused to register eligible Negroes.

Herein is the vice of S. 1564 for some 30 or more counties in North Carolina are subject now to Federal registration because less than 50 percent of persons of voting age residing in these counties were registered on November 1, 1964, or less than 50 percent voted in the presidential election of November 1964. Thus an irrational and almost conclusive presumption is created against these counties although no incidents of discriminatory practices have been shown.

Our literacy test by S. 1564 is by legislation of the Congress transposed into a "device" although it has been approved by the Supreme Court of the United

States. The Attorney General of the United States apparently thinks that the 15th amendment is the source of any regulation or enactment that the Congress chooses to impose. Although one may be naive to cite decisions of the Supreme Court of the United States, yet the fact remains that in *United States v. Reese*, 92 U.S. 214, 28 L. ed. 563, the Court said: "The 15th amendment does not confer the right of suffrage upon anyone." In *Guttm v. United States*, 238 U.S. 347, 35 S. Ct. 926, 59 L. ed. 1340, the Supreme Court of the United States said:

"Beyond doubt, the amendment (the 15th) does not take away from the State governments in a general sense the power over suffrage which has belonged to those governments from the beginning and without the possession of which power the whole fabric upon which the division of State and national authority under the constitution and organization of both governments rest would be without support and both the authority of the Nation and the State would fall to the ground. In fact, the very command of the amendment recognizes the possession of the general power by the State, since the amendment seeks to regulate its exercise as to the particular subject with which it deals."

If we understand the testimony of the Attorney General of the United States he does not rely upon the 14th amendment, and, therefore, we do not cite any cases, although there are many, which hold that the 14th amendment did not confer upon anyone the right to vote and that the privilege of voting is not one of the privileges and immunities of citizens of the United States.

In conclusion it should be pointed out that this proposed bill attempts to exercise a very dangerous power. If the office of the President of the United States should ever be occupied by a ruthless person seeking political power at all costs this act could be converted into a situation where such a person's handpicked registrars could register his voters and exclude those of any opponent.

Attorney General of North Carolina.

Deputy Attorney General.

MARCH 31, 1965.

Senator ERVIN. I also offer my own statement analyzing the ridiculous crazy quilt created by the triggering device used in this bill and showing how there is no relationship between the triggering device in the States which are excluded by the bill and in the States which are included. I put that in the record.

(The statement referred to follows:)

THE VOTING BILL AND VOTING STATISTICS

The height of paradox is presented by the formula proposed in the administration's voting rights bill, S. 1564, to establish the presumption that the 15th amendment had been violated. New York, which uses a literacy test, had 74.5 percent of its citizens registered, while North Carolina, which also uses a literacy test upheld by the Supreme Court, had 76 percent of its voters registered. Given these facts, any reasonable man would think that a voting bill designed to secure the right of citizens to register and to vote would touch both New York and North Carolina. Yet, Mr. President, the State of New York is untouched by S. 1564, while 34 counties in North Carolina are presumed guilty of voter discrimination under the 15th amendment.

Section 3(a) of S. 1564 creates a presumption that any State or political subdivision using a literacy test has violated the 15th amendment if 50 percent or less of those of voting age were not registered on November 1, 1964, or did not vote in the 1964 presidential election. Volume 12 of *American Jurisprudence* states that " * * * facts may be prima facie evidence of other facts if there is a rational connection between what is proof and what is to be inferred, and if the rule is not arbitrary." There is no rational connection, however, between the fact that less than 50 percent of the persons of voting age in a State failed to vote and the presumption that this low voting percentage is due to a violation of the 15th amendment. Lack of participation in elections is brought about by many factors: a strong one-party system, a confidence in victory, dissatisfaction with both candidates, or a plain lack of concern. For instance, under the proposed bill, a single county in Maine would be affected. Yet as the

Attorney General pointed out, "A snowstorm could have kept the voters away from the polls."

I am in favor of any law that is constitutional and operates on a fair basis to end violations of the 15th amendment, but I think this bill does not do it. The absurdity of the 50-percent tests contained in section 3(a) of the bill is exhibited by reference to my own State.

Almost 52 percent of all the North Carolinians of voting age voted in the last general election. Had the percentage fallen below 50 percent, then every one of the 100 counties in North Carolina would have been subjected to the sanctions of this bill. Thirty-four counties did vote less than 50 percent in the 1964 elections; therefore, these counties will be presumed to have violated the 15th amendment. It is also noteworthy, that North Carolina's literacy test, which is a simple test of reading and writing, has been held constitutional in the case of *Lassiter v. Northampton Board of Elections* (360 U.S. 45). New York County, N.Y., which uses a literacy test, has a population of almost one-half that of North Carolina. The percentage of the voting age population of New York County that participated in the 1964 presidential election was 51.8. What kind of logic would accuse Hyde County, N.C., which voted 49.7 percent of its voting age population, of violating the 15th amendment, but leave New York County untouched?

In the District of Columbia during the last election only 88.4 percent of the residents voted, and only 42.6 percent were registered. This resulted despite the fact that the Constitution had been amended to permit District residents to vote in presidential elections and a strong drive had been made to increase voter registration. Special registration booths were established and kept open evenings and weekends to facilitate voter registration. In the District there is no literacy test, and the only requirement for registration is that the applicant be 21 years or older and have resided in the District for at least a year. Yet, if the District had a literacy test, the bill would condemn District officials for discrimination on the basis of race or color.

These voting figures strongly indicate that considerations—other than discrimination—may cause low voting statistics. In short, voting statistics alone do not demonstrate that the 15th amendment has been violated by use of a literacy test.

Florida has no literacy tests; there, in 1964, 52.7 percent of the voting age population voted. In five Florida counties the voting percentage was less than 50 percent. In one Florida county, only 88.6 percent voted—a smaller percentage than that for any North Carolina county. Yet 84 of North Carolina's counties are covered by this bill whereas no Florida county is covered.

Arkansas has no literacy tests, but in 1964 only 49.9 percent of the voting age population voted. It would not be covered by this bill but North Carolina which voted 51.8 percent of its voting age population would be.

Kentucky has no literacy test and in the last election 52.9 percent of the residents voted. In 18 counties, however, less than 50 percent voted. Kentucky, like Arkansas, would not be covered by this bill; neither would any of the 13 counties which voted less than half of their voting age population.

Maryland has no literacy test, and while the State achieved a statewide percentage of 56 percent, there were three counties where less than 50 percent voted but these counties are covered by the bill.

The absurdity of using percentages is further illustrated by comparing North Carolina, which has a literacy test, with its neighbor Tennessee which does not have a literacy test. North Carolina's voting percentage was 51.8 percent while the voting percentage of Tennessee was 51.1 percent or slightly lower. In North Carolina, 84 out of 100 counties had a percentage of less than 50 percent; in Tennessee, 22 out of 95 counties had a voting percentage of less than 50 percent. Was it literacy tests that caused the low percentage, or just the general apathy of voters, both white and Negro? Can it be demonstrated by any law or logic that North Carolina is guilty of discrimination under the 15th amendment, while Tennessee is not, simply because the latter does not have a literacy test?

In Louisiana, to take another example, 47.8 percent of the people voted; in Texas only 44.4 percent voted. Under the proposed bill, these statistics would be used to justify the conclusion that there were violations of the 15th amendment in Louisiana, but none in the State of Texas.

According to the bill, 84 counties in North Carolina have been violating the 15th amendment. There are 137 counties in Texas which voted less than 50 percent, but these counties are not covered by the bill. The State of Texas, which voted 44 percent, is deemed not to be guilty of violating the 15th amendment simply because it had no literacy test. Nineteen of North Carolina's condemned counties actually had a higher voting percentage than the "guiltless" State of Texas. The State of North Carolina voted over 50 percent and yet one-third of the State is deemed to have violated the 15th amendment simply because it does have a literacy test, which has been held constitutional by the U.S. Supreme Court.

According to statistics submitted by the Attorney General, 75 percent of the voting age population in North Carolina is registered. This is a greater percentage than in at least 18 States not covered by the bill.

State	Registered voters (percent)	State—Continued	Registered voters (percent)
Arizona.....	66	Michigan.....	72
Arkansas.....	56	Nevada.....	67
California.....	76	New York.....	74.5
Florida.....	54	Oregon.....	75
Hawaii.....	60.6	Tennessee.....	72.7
Kentucky.....	51	Texas.....	56.3
Maryland.....	70.6		

And yet, one-third of the State of North Carolina, through the illogical inferences sanctioned and compelled by section 3(a) of the voting bill, are singled out by the Congress and pronounced guilty of violating the 15th amendment.

In view of these facts, it becomes clear, that the criteria developed under the administration's bill for determining violations of the 15th amendment are illogical, discriminatory, and represent a vivid example of hurried draftsmanship.

It would be well for our country if those who advocate this hasty legislation would pause and ponder these words of Mr. Justice Davis, speaking for the Court in *Ex parte Milligan*:

"The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times, and under all circumstances. No doctrine, involving more pernicious consequences, was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government."

Senator ERVIN. I should like to make this statement for myself as a witness, and I shall be glad to be cross examined by anyone.

The 1960 census shows that North Carolina has a total white population of 3,399,285, a total nonwhite population of 1,156,870.

Of this nonwhite population, 1,118,021 is Negro, and while it may be surprising to some people not familiar with North Carolina, the bulk of the other 40,849 nonwhite is Indian. North Carolina ranks fourth, incidentally, in Indian population in the States of the Union.

Senator HART. Mr. Chairman, even if I were free to remain, I would not presume to cross-examine you. But I must make my apologies. I think that the reader of the record from this point on will be listening to a man who has served with distinction for many years as a trial judge, as an appellate court judge, preceded by many years as a practicing lawyer, and is serving now as a Senator. It will be interesting to see how a really qualified witness will sound in the record.

Senator ERVIN. I appreciate the kind remarks of the Senator from Michigan, and I understand why any Senator is impelled to leave a committee, because most of us have three or four committees going on at the same time.

The first thing I would like to point out is that there are 100 counties in North Carolina, and according to the reports of the Civil Rights Commission, complaints have been received from only 5 of those counties since the passage of the Civil Rights Act of 1957, of alleged denials of voting rights on the basis of race or color.

The total number of these complaints has been 36; 17 of them were received in 1959, which means that they could not have arisen earlier than 1958. This is true because North Carolina has had no registration and no election in the year 1959. North Carolina holds its elections in even years and does not register voters except during a period of about 1 month before the primary, which comes on the last Saturday of May in each year, and about a month before the general election, which comes on the first Tuesday in November of each year. So at least 17 of these complaints arose at least 7 years ago.

The Civil Rights Act of 1957 provides for the receipt by the Civil Rights Commission and by the State advisory committees of complaints in writing and under oath from any persons who claim they have been wrongfully denied the right to register to vote on account of race or color.

North Carolina has a State advisory committee which is charged with the duty to investigate conditions in North Carolina and to make reports on such conditions in this field to the U.S. Commission on Civil Rights. This committee was composed of Mr. J. McNeill Smith of Greensboro, N.C., as chairman, who is an extremely able lawyer; A. T. Spaulding of Durham, N.C., vice chairman.

Incidentally, Mr. Spaulding is a Negro and is the president of the largest insurance company owned and operated by members of the Negro race. The principal office, or home office, of his company is in Durham, N.C. Its name is the North Carolina Mutual Life Insurance Co.

The secretary is Mrs. Margaret R. Vogt of Wilson, N.C., who is secretary; Millard Barbee of Durham, N.C., who is the president of the AFL-CIO in North Carolina; Paul R. Ervin, an attorney at law of Charlotte, N.C.

I wish to acquit Paul of any charge of any relationship to myself, notwithstanding the fact that I would be proud to be related to him and notwithstanding the fact that he spells his surname exactly like I do. I held court over a period of 7 years in the county in which he practices law, and he has had cases before me and many cases in which I was superior court judge. I know no man who has a greater capacity for objective viewing of any problem and who has a higher degree of intellectual integrity than he has.

Another member of the committee was Hector MacLean of Lumberton, N.C., who is a banker and is son of a former Governor of North Carolina.

Another member of the commission is Conrad O. Pearson, an attorney at law of Durham, N.C., who is a Negro lawyer of excellent character and ability.

Another member of the committee was William L. Thorp, Jr., of Rocky Mount, N.C. He is an attorney at law, and incidentally, the

son of a college mate of mine and one of the brightest young lawyers in the State.

Another member is Curtiss Todd of Winston-Salem and Marion A. Wright, to complete the membership of this committee.

This committee is located throughout the State so that every area of the State is represented—east, west, and Piedmont, the three great sections of our State.

This committee, over a period of several years, conducted hearings throughout the State for the purpose of receiving complaints from any person who claimed that he had been denied the right to vote on account of race or color. According to page 451 of the U.S. Civil Rights Commission report entitled "The 50 States Report," published in 1961, they held hearings in New Bern, Greenville, Rocky Mount, and Fayetteville in the eastern part of the State.

Incidentally, New Bern is the county seat of Craven County, one of the counties that is being deprived of its constitutional prerogatives under this bill, and Greenville is the county seat of Pitt County, another one of these counties. Fayetteville is the county seat of Cumberland County which is also one of the 84 counties.

Rocky Mount is situated right in the area of others of these 84 counties.

Then hearings were held in Raleigh, Durham, Greensboro, Winston-Salem, and Charlotte, the chief cities of the Piedmont, which is the middle area of North Carolina. Hearings were also held at Asheville, which is in the western part of the State.

The hearings were held at these places over a period of several years, and the times and places were announced in the papers and the press of North Carolina. Notice was given that anyone who had any complaint that he had been denied the right to vote in violation of the 15th amendment was invited to come and be present and present his claim to them.

In addition to this, public notice was given that any citizen of North Carolina who claimed he had been denied the right to vote in violation of the 15th amendment could present his claim individually to any member of the North Carolina State Advisory Commission.

Now, I mentioned the fact that the record shows that only a total of 36 complaints of deprivations of voting rights were received from the 1,156,870 nonwhites in North Carolina. So far as I know, only one of these claims was ever litigated in court, that was a case from Bertie County, entitled "*Basemore v. the Board of Elections of Bertie County*." It was held by the North Carolina Supreme Court in that case that the registrar in Bertie County had committed an error of law in permitting a person to copy a section of the North Carolina law from dictation. They found that under the North Carolina literacy test, a person is entitled to have the Constitution laid beside him where he can read it and copy it.

I have also noted the fact that 17 of these 36 cases had to originate at least as early as 1958. The other originated in 1960.

I want to make an additional statement on the location of the cities where these hearings were held.

Half of Rocky Mount is in Edgecombe County and the other half is in Nash County. Edgecombe County is 1 of these 34 counties.

I would like to call attention to the fact that at page 451 of the same publication of the U.S. Civil Rights Commission it states this: "To date, the committee has received sworn written statements from 5 of the 100 counties of the State." Those complaints were among the 36 that I have mentioned.

I would call attention to another publication of their Civil Rights Commission entitled "Equal Protection of the Laws of North Carolina," which covers the period 1959-62. On page 19, it states, and I quote: "In the more than 3 years that this committee has been in existence, there have been no such complaints"—that is, complaints of denials of voting rights—"on the basis of race from any of the other 95 counties of the State."

Now, nine of these complaints came from Franklin County. While the record does not so state, it indicates that all of them came from one precinct and involved the action of one registrar. These complaints all originated in 1960 in connection with the May primary. Four of the other complaints came from Greene County, one of them being at least as far back in origin as 1959. Three of these complaints in Greene County originated in connection with registration for the May primary of 1960, and involved the same registrar in that county.

Seven complaints were received from the third county, Bertie County, by the North Carolina Advisory Committee on May 20, 1960. These originated apparently in three different precincts. One of them gave rise to this case, *Basemore v. The Bertie County Board of Elections*, which is reported in "254, North Carolina Supreme Court Reports," page 398.

Ten of these complaints originated in 1959 in Halifax County, and the evidence given by the Attorney General, as well as a copy of the opinion in the case by the U.S. District Court of the Eastern District of North Carolina shows that all objections arising in Halifax County were corrected within about 12 days after the filing of the suit. The suit was dismissed on the ground that there was no occasion for it to be prosecuted further.

The fifth county where complaints were received was Northampton County. All of these complaints were received in 1959 and they total six in number.

North Carolina has approximately 2,200 precincts and in each of these precincts there is one registrar who passes on the qualifications for voters.

The registrar in the present setup is a member of the Democratic Party.

Then there are two judges, one a Republican and one a Democrat. But the judges have nothing to do with passing on registration.

So it would appear, that out of the 2,200 registrars in North Carolina since the creation of the U.S. Civil Rights Commission in 1957, not more than approximately 7 registrars out of 2,200 have been charged with denying any person the right to vote on account of race or color. Whether these complaints were justified in any of these cases except

the *Basemore* case is not clear, because there was no adjudication made with respect to them.

But I submit that no State that has 2,200 election officials should be deprived of this constitutional right to use the literacy test in determining the qualifications for voters, because possibly 6 or 7 or 8 election officials out of 2,200 may not have exercised good judgment in administering a literacy test.

I consider this a punishment for supposed guilt upon an awful lot of innocent people.

I want to call attention to some registration figures for 1960; during the 1960 general election, 210,450 nonwhites were registered to vote, according to figures supplied by the U.S. Civil Rights Commission as appears from page 454 of their publication entitled "The 50 States Report."

On that same page is a mathematical or typographical error stating that these 210,450 nonwhites who were duly registered amounted to only 31.2 percent of the nonwhites of voting age. That should be 38.2 percent, as appears from anybody's arithmetic and also as appears in another publication of the U.S. Civil Rights Commission. The calculation appears correctly as 38.2 percent on page 283 of the publication of the Civil Rights Commission entitled "Voting 1961, U.S. Commission on Civil Rights Report."

Now, at that time, the total number of nonwhites in North Carolina of voting age, as shown upon the same page of the last publication, was 550,929, of whom 210,450 or 38.2 percent, were registered.

So much for the 1960 figures.

I pointed out this morning that according to the publication of the U.S. Civil Rights Commission entitled "The 50 States Report," which bears the date of 1961, a total of 239,687 new names were added to the registration books of North Carolina in 1960, and of that number 208,672 were whites and 31,015 were nonwhites.

I also called attention this morning to the fact that on page 473 of the same publication, it appears that 759 people who applied for registration in North Carolina were denied registration on the ground that they could not pass the literacy test.

What this means in very simple language is that the following percentage of all people in North Carolina applying for registration, both white and nonwhite, during 1960 passed the literacy test; 99.—and I am going to give you a lot of figures beyond the decimal point—99.99684.

To my mind, as I said this morning, it is like using an atomic bomb to get rid of one mouse to say that you are going to abolish literacy tests in a State where 99.99684 percent of the people passed the literacy test. Certainly on that kind of a basis no rational man can honestly contend that those figures show that the literacy test is being used to deny people the right to register to vote on account of race or color.

Now, to put this thing in reverse, the figures of the Civil Rights Commission itself show that during 1960, this percentage of people, whites and nonwhites both, applying for registration, failed the test: 0.000316. That means that only three-thousandths of 1 percent of the

people in North Carolina, both white and nonwhite, who applied for registration in 1960 failed to pass the literacy test.

Now, I want to show some other figures about 1964. I cannot get official figures; they are not available. But I have been supplied by the Civil Rights Commission with certain figures which are based on compilations made by the voter education project of the Southern Regional Council.

As I understand it, the Southern Regional Council is financed by the Ford Foundation and it certainly is not engaged in picturing conditions in Southern States any better than they are. There are some very interesting things in this connection.

In 1960, as I pointed out, 38.2 percent of the nonwhites in North Carolina were registered. The figures for 1964 show that that had increased from 38.2 to 46.8 percent. The number had increased from 1960 to 1964 by approximately 58,000, because 258,000 nonwhites of voting age in North Carolina were registered in 1964. That is a very substantial figure and a very substantial increase, because the total number of nonwhites of voting age in North Carolina, according to the 1960 census was only 550,929.

Now, I want to address myself very briefly as far as I can to some of these counties that were charged with discrimination. In fact, no discrimination has been proved in any case, even in the *Basemore* case, because that was based upon misinterpretation of a law by the registrar. Thus far, I have been relying on figures supplied by the Civil Rights Commission. I do not think it is infallible, because in its publication for 1963, called "Civil Rights," at page 20, it is stated that there were 100 counties in the United States where denials of voting rights were indicated. Then they said on page 20 of that same publication that 7 of these 100 counties were in North Carolina. They added this, however:

The most recent figures available for these seven counties indicated a marked increase in Negro registration.

I think that is bound to be a mistake as to one of them. On page 35, it lists among those seven North Carolina counties the county of Graham. That is a county that is cited as having discrimination against persons in voting on account of race or color. The county of Graham, according to information supplied me, has not a single Negro resident in the entire county. Certainly it could not be discriminating against people who did not exist within the borders of this county.

Now, at that time, Bertie County was included in that report because of these complaints, and also because it had allegedly only 718 Negroes registered. The latest figures which I have just obtained from the Board of Elections of Bertie County show that number has doubled in 4 years. There are now 1,434 Negroes registered to vote in Bertie County. To my mind this is a very substantial increase.

Hertford County was one of the counties included in the seven listed in this publication as counties where there were indications of the denial to vote on the basis of race or color. So far as I can ascertain, that is based solely upon the percentage of Negroes voting and not upon the actual complaints or investigations.

Another one of these counties that is listed by the Civil Rights Commission as being a county where discrimination was indicated—not proved, but indicated—was Green County, where 385 Negroes were registered in 1960. Now their number has risen to 622.

Another one of these counties was Halifax County, the one that was involved in the lawsuit, in 1962.

These figures I have given you are for 1962 rather than 1960.

In 1962, there were 19,054 Negroes registered, or 14.3 percent of those of voting age in Halifax County. By 2 years later—that is, in 1964, 3,644 Negroes were registered, amounting to 26.5 percent, which is a very substantial increase.

I do not have the figures for Hertford County, but I have been informed that there are no impediments whatever offered to Negroes to registered in Hertford County. In fact, I have been furnished with a newspaper from Hertford County which has an article to that effect.

I am sorry, I do not have these figures from these other counties. I have requested all of the county election boards in North Carolina to furnish me information concerning their county regarding the number of persons voting in the November 1964 election, the number of whites and Negroes registered, the number of years records have been kept on literacy tests, the number of Negroes who passed and failed the State literacy tests and the number of whites who passed and failed the State literacy tests. Because of time restrictions placed on S. 1564 by the Senate, I have not been able to receive replies from all North Carolina counties. However, I have 50 replies, including those from 19 of the 34 counties which would be included under the administration's voting rights bill. These official statistics indicate that the number of Negroes who failed North Carolina's literacy test and the number of whites who failed this test were approximately the same in most cases. For example, in 6 of the 50 counties reporting, no Negroes failed the test, and in 7 of the counties, no whites failed the test.

Additional statistics point out that the number of Negroes who passed the literacy test was high in relation to the number who failed.

Also, these general observations held true for the 19 counties that reported out of the 34 that would be covered by the bill. In other words, there is no statistical evidence from these official records that indicated there was any systematic discrimination by election officials in North Carolina.

These official statistics disagree with those reported weekly in the Congressional Quarterly and indicate that even an invariably accurate source such the Congressional Quarterly may be in error. In 9 of the North Carolina counties which would be affected by S. 1564, the March 19 edition of the Congressional Quarterly inaccurately reported the total number of persons who voted in the 1964 presidential election. In every case except two, the erroneous figure reported by the Congressional Quarterly was less than that reported by the county election officials.

I would like to insert at this point the statistical data based upon information furnished to me by the county boards of election of these various counties.

(The document referred to follows:)

THE REPORT OF 50 NORTH CAROLINA COUNTIES ON VOTING AND LITERACY TEST STATISTICS

I have requested all of the county election boards in North Carolina to furnish me information concerning their county regarding the number of persons voting in the November 1964 general election, the number of whites and Negroes registered, the number of years records have been kept on literacy tests, the number of Negroes who passed and failed the State's literacy test, and the number of whites who passed and failed the State's literacy test. Because of the time restrictions placed on S. 1564 by the Senate, I have not been able to receive replies from all North Carolina counties. However, I have received 50 replies, including those from 19 of the 34 counties which would be included under the administration's voting rights bill.

These official statistics indicate that the number of Negroes who failed North Carolina's literacy test and the number of whites who failed this test were approximately the same in most cases. For example, in 12 of the 50 counties that reported, no Negroes failed the test and in 11 of the counties, no whites failed the test. Additionally, these statistics point out that the number of Negroes that passed the literacy test was high in relation to the number that failed. Also, these general observations held true for the 19 counties that reported out of the 34 which will be covered by the voting bill. In other words, there is no statistical evidence from these official records that indicate there was any systematic discrimination by election officials in North Carolina.

These official statistics disagree with those reported recently in the Congressional Quarterly, and indicate that even an invariably respectable source such as the Congressional Quarterly may be in error. A comparison will show that in 9 of the 34 North Carolina counties which would be affected by S. 1564, the March 19 edition of the Congressional Quarterly inaccurately reported the total number of persons who voted in the 1964 Presidential election. In every case except two, the erroneous figure was reported in the Quarterly was less than the figure reported by the county election officials.

County	Congressional Quarterly figures	Official figures	County	Congressional Quarterly figures	Official figures
Beaufort ¹	9, 985	9, 855	Martin.....	6, 382	6, 329
Bertie.....	4, 268	4, 252	Warren.....	4, 758	4, 624
Camden.....	1, 404	1, 443	Wayne.....	17, 346	17, 914
Hoke.....	3, 033	3, 060	Wilson.....	12, 240	12, 520
Lenoir.....	12, 234	12, 333			

¹ Two statistical tables are attached.

The report of 50 North Carolina counties on voting and literacy test statistics

County	Total registered, Nov. 1, 1964	White	Negro	Voting, November 1964 general election	Years records kept on literacy tests	Negroes who failed test, 1964	Negroes who passed test, 1964	Whites who failed test, 1964	Whites who passed test, 1964
Alexander	10,887	10,290	597	7,541	1.	0.	0.	0.	All.
Anne	12,846	12,751	95	9,275	Have not kept them.	0.	All.	0.	All.
Avery	5,982	5,847	35	4,512	1.	0.	0.	1.	All but 1.
Beaufort	21,195	18,286	2,909	9,856	1964, 1st year.	(1).	(7).	(7).	(7).
Bertie	6,673	5,239	1,434	4,252	1964.	30.	560.	1.	806.
Caldwell	24,160	22,227	1,933	19,779	1964 general election.	4.	Unknown.	14.	Unknown.
Camden	2,083	1,800	283	1,449	Keep only current tests.	4.	43.	2.	51.
Craven	13,749	10,989	2,810	12,133	April 1964.	22.	2,810.	20.	10,939.
Clay	3,181	3,145	36	2,600	1.	0.	0.	0.	74.
Columbus	22,901	18,394	4,517	13,776	No written test.	6.	All.	0.	All.
Cumberland	31,685	28,798	2,887	22,957	No answer.	Approximately 8.	No answer.	No answer.	No answer.
Currituck	3,090	2,719	371	2,281	1 election past.	No record.	135.	No record.	229.
Davie	10,153	9,314	839	7,709	1.	1.	68.	1.	243.
Durham	49,278	34,580	14,698	39,777	2.	0.	All.	0.	All.
Forsyth	86,134	62,002	17,072	63,822	No record.	Approximately 4.	Unknown.	Approximately 2.	Unknown.
Greene	6,017	5,395	622	3,613	1.	5.	37.	7.	140.
Guilford	103,485	85,699	17,786	77,160	No records.	3.	3,718.	4.	11,254.
Henderson	18,415	17,700	715	14,846	1964 general election.	0.	263.	3.	1,835.
Hertford	6,118	4,038	2,080	5,014	1 year.	3.	118.	3.	228.
Hoke	3,770	2,320	817	3,080	1.	5.	99.	5.	18.
Hyde	2,612	2,308	304	1,641	1.	None.	All.	0.	All.
Jackson	9,900	8,822	1,078	8,380	No answer.	Estimate 12.	Estimate 490.	Estimate 10.	Estimate 241.
Jones	6,281	4,770	1,511	2,910	There is no written record of literacy test.	10.	942.	3.	2,161.
Lenoir	18,499	14,977	3,522	13,563	No answer.	0.	All.	0.	All.
McDowell	14,913	14,303	610	10,488	1964 general election.	0.	0.	0.	All.
Macon	7,942	7,384	558	6,786	No test.	25.	454.	4.	227.
Martin	10,299	8,508	1,791	6,328	6 months.	Possibly 12.	3,452.	Possibly 8.	15,117.
Mecklenburg	124,995	105,006	19,989	98,301	April 1964.	14.	385.	16.	485.
Montgomery	9,787	8,365	1,422	7,726	1.	9.	642.	7.	1,275.
Moore	14,464	12,418	2,046	11,574	October 1964.	5 or less.	Several hundred.	5 or less.	Several hundred.
New Hanover	30,742	24,154	6,588	24,963	1.	Approximately 26.	551.	Approximately 10.	988.
Onslow	8,017	6,453	1,562	6,771	Oct. 10, 1964.	12.	288.	2.	80.
Pender	6,250	5,000	1,250	5,000	12 months.	1.	180.	0.	250.
Perquimans	12,140	10,098	2,042	8,902	1 year.	(7).	(7).	(7).	(7).
Randolph	32,827	30,000	2,827	24,041	No record.	13.	3,385.	8.	11,770.
Robeson	18,763	11,770	6,993	17,371					

Footnotes at end of table.

The report of 50 North Carolina counties on voting and literacy test statistics—Continued

County	Total registered, Nov. 1, 1964	White	Negro	Voting, November 1964 general election	Years records kept on literacy tests	Negroes who failed test, 1964	Negroes who passed test, 1964	Whites who failed test, 1964	Whites who passed test, 1964
Bowen	36,235	32,006	4,229	29,960	1964	No record	961	No record	6,939.
Brantford	26,109	24,661	1,438	16,710	1964	2	178	0	255.
Scotland	6,102	4,743	1,359	5,163	1964	12	1,319	18	4,743.
Stanley	20,039	18,749	1,290	17,090	2	1	129	1	1,539.
Stokes	12,020	10,714	1,306	9,950	0	0	0	2	0.
Transylvania	8,736	8,368	368	8,432	No record	0	All	0	All.
Tyrrell	2,936	2,492	503	1,406	2	2	194	2	115.
Union	14,000	12,890	1,111	11,637	2	2 since 1962	1,131 since 1962	5 since 1962	12,890 since 1962.
Wake	74,374	62,475	11,799	55,294	1	(0)	(0)	(0)	(0).
Washington	4,163	3,204	959	2,387	1 year	1	166	0	261.
Wayne	25,350	19,228	6,122	17,914	None				
Wilkes	29,946	28,476	1,470	20,530	No literacy test as such administered.				
Wilson	16,941	13,834	3,107	12,339	1	6	919	5	1,331.

¹ Not sufficient records to answer.

² Hoke County reported that 133 Indians were registered in November 1964; 4 Indians failed the literacy test in 1964 and 10 passed.

³ No record—few failed.

⁴ Robeson County reported that 3,056 Indians were registered in November 1964; 17 Indians failed the literacy test in 1964 and 3,056 passed.

⁵ No record on failure by race.

The report on voting and literacy test statistics of 19 North Carolina counties that will be covered by the administration voting bill

County	Total registered, Nov. 1, 1964	White	Negro	Voting, November 1964 general election	Years records kept on literacy tests	Negroes who failed test, 1964	Negroes who passed test, 1964	Whites who failed test, 1964	Whites who passed test, 1964
Beaufort	21,196	18,280	2,939	9,835	1964, 1st year	(1)	(1)	(1)	
Bertie	6,673	5,239	1,434	4,262	1964	30	360	1	306
Camden	2,035	1,900	263	1,449	Keep only current tests	4	49	2	51
Craven	12,749	10,936	2,810	12,133	April 1964	32	2,510	20	10,939
Cumberland	21,638	25,798	6,840	22,967	No answer	Approximately 8	No answer	No answer	No answer
Greene	6,017	5,396	622	5,613	1	5	87	7	140
Hertford	6,118	4,068	2,060	5,014	1 year	1			
Hoke	3,770	2,820	917	2,050	1	3	116	3	223
Hyde	2,612	2,308	304	1,641	1	5	96	5	15
Lenoir	18,496	14,977	3,492	13,353	No answer	10	942	2	2,161
Martin	10,399	2,508	1,791	6,328	6 months	25	454	4	297
Pasquotank	9,017	6,445	1,622	6,771	Oct. 19, 1964	Approximately 26	651	Approximately 19	968
Person	12,140	10,058	2,042	6,502	1 year	1	150	None	250
Robeson	15,758	11,770	3,985	17,371	1964	13	3,936	3	11,770
Scotland	6,122	4,745	1,359	5,166	2	12	1,219	15	4,743
Union	14,000	12,869	1,131	11,437	None	5 since 1962	1,131 since 1962	5 since 1962	12,869 since 1962
Wayne	25,250	19,228	6,122	17,914	1	6	919	5	1,531
Wilson	16,941	12,614	3,127	12,329					

¹ Not sufficient records to answer.

² Hoke County reported that 138 Indians were registered in November 1964; 4 Indians failed the literacy test in 1964 and 16 passed.

³ Robeson County reported that 3,058 Indians were registered in November 1964; 17 Indians failed the literacy test in 1964 and 3,038 passed.

Senator ERVIN. There is an old expression that "Figures do not lie, but liars figure." This hearing has proved not only that, but that figures do lie. The figures supplied me by the Civil Rights Commission for 1964 are very interesting figures. For example, in Alamance County, which is the county where my colleague, Senator Jordan, lives, 69.7 percent of all the nonwhites are registered. I think that registration would probably compare favorably with virtually any registration throughout the United States.

But here is a queer thing. Buncombe County, where Asheville is located, and where hearings were held, has a white population of voting age of 72,249, and a nonwhite population of voting age of 8,510. Only 28,894 of the white are registered, whereas 5,695 of the nonwhites are registered. In other words, in Buncombe County, N.C., according to figures supplied me for 1964 by the U.S. Civil Rights Commission, only 39.9 percent of the whites of voting age are registered, whereas 66.9 percent of the nonwhites of voting age are registered.

Now, if you take the reasoning of those who support the administration bill, you would say that would establish beyond all question that in Buncombe County, N.C., the election officials are discriminating against whites and in favor of nonwhites. This proves that when you take figures you can prove anything with them.

Now, here is another county in North Carolina, Forsythe County, which is where Winston-Salem is located, and the center of the great R. J. Reynolds Tobacco Co., which employs thousands of Negroes. The white registration is 76.6 percent, and the nonwhite is 40.1 percent.

In Buford County, N.C., 61.5 percent of the nonwhite adults are registered, as compared with 73.4 percent of the whites.

In Mecklenburg County, N.C., whose county seat is Charlotte, 58.8 percent of the adult whites are registered and 44.6 percent of the adult nonwhites are registered.

Here is a very interesting figure. The State capital of North Carolina is located in Raleigh, N.C. If the State of North Carolina were engaged in discrimination, it certainly seems it ought to be reflected in the figures for the county where the State capital is located. The white population of Wake County is 76,799; the nonwhite is 22,856—that is, I am talking about people of voting age. The number of whites registered is 43,869, the number of nonwhites is 12,586. And this means that 57.1 percent of the whites are registered and 55.1 percent of the nonwhites are registered.

I have already pointed out that 46.8 percent of all the nonwhites in North Carolina are registered on a statewide basis, according to the figures supplied me by the U.S. Civil Rights Commission for the year 1965.

It would appear that the reasons attributed by the North Carolina Advisory Committee to the Civil Rights Commission for the small percentage of North Carolina Negroes voting might also be applicable to New York County where only 51.3 percent of the people of voting age voted, and particularly New York's 18th and 19th Congressional Districts which voted 46.7 percent and 43.5 percent respectively.

The 18th Congressional District is one of the few districts in the United States with a Negro Congressman, Mr. Adam Clayton Powell, and includes the heart of Harlem.

By the same token, there appears to be an analogy to the situation in the District of Columbia which also has a large Negro population and voted 38.4 percent, a much smaller percentage of its population of voting age than did North Carolina which voted 51.8 percent of her residents of voting age. Yet all of these districts would be exempt from the provisions of this law. This has no rhyme and no reason whatever.

I add these observations. North Carolina has 100 counties, and only 11 of them voted smaller percentages of the vote on Republican and Democratic tickets than Congressman Farbstein's 19th Congressional District, located in New York County.

I put in the record the other day a letter from the chairman of the North Carolina State Board of Elections, William Joslin, who stated that he had notice of only one or two complaints about literacy test matters, and which stated further that the North Carolina State Board of Elections had been holding meetings throughout the State, giving instructions to registrars and voting officials, so as to have a uniform application of the law.

North Carolina has a very simple literacy test. The North Carolina law merely provides that a person must have five qualifications in order to vote. The first is a residence qualification. He must be a resident of the State of North Carolina 1 year at the date of election, and resident in the precinct 30 days by the date of election.

The second requirement is the literacy test. He must be able to read and write any section of the State constitution, and that, as I stated a moment ago, the Supreme Court holds, requires that he be given an opportunity just to look at it and read or copy a certain section of the State constitution.

The third requirement is he must be 21 years of age by the date of election.

The fourth requirement is that he must be an American citizen, either by birth or by naturalization. If he has lost his citizenship by reason of having received imprisonment in the State's prison, he must have his citizenship restored by the manner prescribed by law.

I might add that is a very simple procedure by which he files a petition with the superior court and proves that he has been of good character since his release from prison.

The fifth requirement is that he must be of sound mind in that he must be neither an idiot nor a lunatic.

I would like to put in the record at this point some instructions issued in Mecklenburg, N.C., outlining the requirements for voting and certain procedures which are required to be followed by the registrars and judge at election.

(The document referred to follows:)

Mecklenburg County

INSTRUCTIONS FOR REGISTRATION

READ PAGE 26, SECTION 29 OF ELECTION LAWS OF THE STATE OF NORTH CAROLINA.

An applicant for registration must meet these qualifications:

1. Residence
He must be a resident of the State of North Carolina one year by the date of the Election, and a resident of his present precinct thirty days by the date of the election.
2. Literacy
He must be able to read and write any section of the State Constitution.
3. Age
He must be twenty-one years of age by the date of the Election.
4. Citizenship
He must be an American Citizen, either by birth or by naturalization. If he has lost his Citizenship by reason of having served imprisonment in the State's Prison, he must have had his Citizenship restored in the manner prescribed by law.
5. Sound Mind
He must be neither an idiot nor lunatic.

REGISTER ONLY VOTERS IN YOUR PRECINCT.

Put Polling Place Sign in conspicuous place.

When a voter enters your polling place for registration, follow this procedure:

1. Ask if he has been registered before. (See Transfers below)
2. Ask where he lives, to determine if he is in your precinct. Learn Your Precinct Boundary Lines.
3. If he has not been registered before ask how long has he lived in the state, and how long in your precinct.
4. Ask the applicant to write in the ledger book one section of the constitution which he will select from the six excerpts herein provided by the Board. (See attached mimeographed sheet.) When the applicant has completed the section have him sign his name on the line below. If applicant is unable to fulfil these requirements in a reasonably legible handwriting do not register him. In any case in which an applicant fails to meet this literacy test, registrar will note in margin "rejected" and initial this notation. All entries shall be dated by registrar.
5. Ask him to put his left hand on the Bible and raise his right hand while you administer the oath of registration to him.
6. Ask for his party affiliation. If he does not wish to declare his party, explain that you can register him either as an Independent and as such be barred from voting in party primaries, or you can register him as "NoParty" (designated on blue form

- by NP) which gives him the privilege of declaring a party affiliation on Primary Day to the registrar and voting in the Party Primary of his choice.
7. Using the duplicator with carbon, fill out proper registration forms for him: use white if he is a Democrat, buff if he is a Republican and blue if he is Independent or No Party. You will have two forms for each voter: one original and one carbon copy.
 8. Print his full name, no initials, with correct address and supply all information asked for on the form. Use all CAPITAL letters in printing. Print small.
 9. You sign and then ask him to sign both copies without carbon, using his regular signature.

TRANSFERS

When you ask the voter if he has been registered before, and his reply is that he has been voting at any one of the precincts in the county, instead of filling out new forms for him, have him sign his full name, his new address, his old address and his party affiliation on one transfer form. He cannot change his party affiliation on this transfer (see Change of Party, below). If he has not voted in six years, fill out new forms as if he were a new voter. BE SURE he has been a registered voter in Mecklenburg County and has merely moved into your precinct from another one. If you have the least doubt, register him anew.

When a woman who has married or remarried comes to transfer, fill out new forms for her. The old forms we have would not have her correct name, and we could not change it. Give us a note with the new form, telling who the voter was before marriage.

CHANGE OF PARTY

If a voter wishes to change his party affiliation he may do so by reading the oath on page 22 of the green Guide Book (Primary and General Election Law and Procedure, by Henry W. Lewis). If an Independent wishes to declare his party, he too must read the same oath.

Mail all transfers and registration forms, both used and unused on Saturday night at the close of registration. Do not use paper clips when mailing forms. Put the forms and transfers you have used in small envelope; put unused ones in large envelope marked 4th class mail.

Gatherine C. Carpenter
Executive Secretary
Mecklenburg County
Board of Elections

Senator ERVIN. I want to put in the record a literacy test requirement. The registrar writes in the name of the man and the date he applies for registration, and he sets out this:

Under provisions of General Statute 163-28 and North Carolina—

This is directions to the registrar—

and North Carolina constitution, article VI, paragraph 4, it shall be the duty of each registrar to administer to each applicant for registration these literacy provisions according to standards laid down by the North Carolina Supreme Court. He [the applicant] must be able to read and write any section of the State constitution in the English language.

That is the literacy test in North Carolina. That is the way they give it.

Instructions to the voter are as follows:

Copy the following, writing in the English language:

Then they quote about the shortest section of the North Carolina constitution. Here is the quotation of the North Carolina constitution he is required to write:

That the people of this State have the inherent, sole, and exclusive right of regulating the internal government and police thereof.

And I might digress to say that if this bill passes, that will no longer be true. They will not have the right to regulate the internal affairs.

Then they have some blank lines, just to copy that, and that is the whole literacy test in North Carolina. There is no understanding test. Then he signs his name. Then the registrar has to say whether he approves it or it is disapproved and signs his name. So the record is very simple.

(The form referred to follows:)

LITERACY TEST

Name _____	Date _____
<p>Under provisions of G.S. 163-28 and N. C. Const., Art. VI, Pl. it shall be the duty of each Registrar to administer to each applicant for registration these literacy provisions according to standards laid down by the North Carolina Supreme Court. He (the applicant) must be able to read and write any section of the State Constitution in the English language..</p>	
<p>INSTRUCTIONS:</p> <p>Copy the following, writing in the English language:</p> <p>"That the people of this State have the inherent, sole and exclusive right of regulating the internal government and police thereof,"</p>	
<div style="border-bottom: 1px solid black; margin-bottom: 2px;"></div> <div style="border-bottom: 1px solid black; margin-bottom: 2px;"></div> <div style="border-bottom: 1px solid black; margin-bottom: 2px;"></div> <div style="border-bottom: 1px solid black; margin-bottom: 2px;"></div> <div style="border-bottom: 1px solid black; margin-bottom: 2px;"></div> <div style="border-bottom: 1px solid black; margin-bottom: 2px;"></div>	

(Signature of applicant)

Approved _____

Disapproved _____

Registrar

Senator ERVIN. Here is a sample of an individual who took the literacy test. This was even shorter than the other one, because all he had to write was:

All elections ought to be free.

This is an actual literacy test administered to a man who was a Negro. I struck out his name, because he does not want it to go into the record. He fills out the age, the race, the address, county where born, the question whether he was ever convicted of a felony, what party he is affiliated with.

Then the applicant is required to copy the shortest thing in the North Carolina constitution:

All elections ought to be free.

Well, it shows the registrar passed this man, and I would like to have this reproduced in the record in photostatic copy to see what poor writing you can do and still pass the literacy test in North Carolina.

(The document referred to follows:)

NEW HANOVER COUNTY BOARD OF ELECTIONS
LITERACY TEST

1. [Signature] 41
(Print your full legal name) (Age)
2. [Signature] Negro
(Address) (Race)
3. Bishopville S.C.
(County in which you were born)

4. Have you ever been convicted of a felony? no If so, has your citizenship been restored? _____

5. D
(Your political party; you may write a
D for Democrat or R for Republican)

6. Copy in your own handwriting the following underlined portion of the North Carolina Constitution in the space provided below:

"All elections ought to be free."
(North Carolina Constitution, Art. I, Section 10)

All elections ought to be free
North Carolina Constitution Article 10

7. Date: 10-10-64

Signature

I hereby certify that I have this day examined the above literacy test and I further certify that the applicant has passed this test.

Registrar B. E. Hollis
2 Ward 1st Precinct

NOTE: ANY PERSON WHO FAILS TO PASS THIS TEST WILL BE GIVEN A COPY OF HIS OR HER TEST PAPER UPON REQUEST IN WRITING TO THE NEW HANOVER COUNTY BOARD OF ELECTIONS.

Senator ERVIN. Now, as I pointed out, the North Carolina State Advisory Committee to the U.S. Commission on Civil Rights is

composed of men and women of both races residing in all areas of North Carolina. I have pointed out that since 1960, they have only received 19 complaints of denials of voting rights on the basis of race or color. I have also pointed out that there is nothing to indicate that these denials actually existed. They are not proved except in the Basemore case.

Now, these people who know North Carolina, white in some cases and nonwhite in others, and who are numbered among the leading citizens of North Carolina, made a report which the U.S. Civil Rights Commission accepted and printed. It is in the book, "The Fifty States Report." That was printed in 1961. Here is what they say on page 43:

We believe that in respect to voting, the people of North Carolina are in agreement that no citizen of our State should be denied the right to register, vote, and have that vote counted on account of his race, religion, or national origin. Where registrars have artificially imposed more difficult literacy tests on Negro applicants than on the white, wherever there has been discrimination against Negroes, in respect to their right to register and to vote, such denial of the basic right of citizenship does not have the approval, either open or tacit, of the vast majority of officials and citizens of our State. We believe that where such discrimination has been practiced, it has already disappeared or will soon disappear.

I wish to read into the record a statement made by the North Carolina advisory committee and accepted and printed by the U.S. Commission on Civil Rights in the book entitled "Equal Protection of the Laws in North Carolina," which covers a period down through 1962:

There were no voting complaints filed by this committee after the May registration prior to the general election in November 1960. This fact, plus the fact that there have been no complaints from 95 out of the 100 counties, may mean that the disproportionately low registration and low voting of Negroes in North Carolina is due more to apathy or, as the registrars in Bertie and Green Counties suggested, to poor schooling and poor school attendance than to election officials' arbitrary denial of the right to register on account of race.

I mentioned the fact that one of the members of the North Carolina State advisory committee is Paul R. Ervin, an attorney at law of Charlotte, who so far as I know can be justly acquitted of being any relation of mine, notwithstanding the fact that we both spell our surnames in the same way—I have already mentioned the fact that I do not know a human being who has a greater capacity for viewing problems objectively and who has a higher degree of intellectual integrity than Paul Ervin. He wrote an article which is published in the North Carolina Law Review for December 1963, and which was part of an issue on civil rights in the South. This was a symposium, and to which such persons as Berle I. Bernhard, whose was the Executive Director of the U.S. Civil Rights Commission, and Marion A. Wright, another member of the North Carolina commission and other persons contributed.

Paul Ervin, assisted in conducting investigations of this subject throughout North Carolina under the authority delegated to the North Carolina State Advisory Committee on Civil Rights by the U.S. Commission on Civil Rights under the 1957 act. This is what he said in this issue of the North Carolina Law Review, page 35:

As of today—

That is as of December 1963—

it may fairly be said that if our nonwhite citizens do not exercise their civil right to vote, they have no one to blame but themselves.

I think that the proposal that 34 North Carolina counties be included in this bill on an artificial basis has no justification in fact or in simple fairness. I think that I am a typical North Carolinian in this respect. The overwhelming majority of North Carolinians believe that every citizen who possesses the qualifications to vote as prescribed by State law, is entitled to register and to vote, and that the denial of this right on any grounds should not be tolerated.

I favor the enforcement of the 15th amendment and I would support appropriate legislation to enforce it. I do not believe, however, that I can be true to my oath as a Senator of the United States to support the Constitution and still support a bill based on the theory that in order to enforce the 15th amendment, Congress must nullify at least four other provisions of the Constitution. Section 2 of article I and the 17th amendment, provide in express language that electors or Senators and Representatives in Congress must possess the qualifications of electors of the most numerous branch of the State legislature and by their own terms, confer upon the States the power to prescribe the qualifications for voters for Senators and Representatives in Congress.

I also feel that this bill would nullify amendments 9 and 10, which reserve to the States the undoubted power to prescribe the qualifications for voting in State and local elections. The Supreme Court of the United States has held in every case that has come before it that any State has a right to prescribe a literacy test. I think that this bill is unconstitutional and certainly unfair in that it would select out of all the 50 States of this Union 6 States and 34 counties in another State, and deprive them of the right to exercise constitutional powers conferred upon them by the Constitution of the United States, while permitting all of the other States to freely exercise such constitutional powers.

I do not believe that the Constitution of the United States permits Congress to degrade one State or six or seven States to such an extent that they are not on an equality with the other States of the Union.

Furthermore, I think that all courthouses should be open, and I think it would make a mockery of the judicial process for Congress to pass a law saying that one side to a controversy, namely, the Government of the United States, should have access to every Federal court in this land and that the States and the political subdivisions of States that ought to be covered by this unequal and unjust bill should not have access to any court except the District Court of the District of Columbia.

When our forefathers drew the Declaration of Independence they gave as one of their reasons why the Thirteen Colonies should sever their bands with the mother country, England; the fact that Americans had been transported beyond the seas for trial. It is merely a question of degree between transporting people beyond the seas in order to try them and compelling them to journey anywhere from 250 to 1,000 miles in order to get access to a court. This bill would create an assumption which has no reasonable relationship to the fact on which the assumption is based.

And they would then deny the States and political subdivisions covered by it of the legal power to rebut that presumption and disprove its truth. I find it impossible to reconcile this bill with the Constitution. I find it impossible to reconcile this bill with the most fundamental principles of fair play.

The Department of Justice now has at least four separate laws at its disposal. It permits two of them to accumulate dust. It comes here and complains of what it states are outrageous deprivations of the right to vote in certain areas and although it has the right to have the men that commit those alleged offenses arrested and brought to trial, it refuses to do so.

Instead of using the laws it already has, it wants more laws. In my modest judgment, the Department of Justice now has at its disposal sufficient laws to secure the registration of every qualified citizen of any race in any area in the United States.

I am sorry that none of my brethren on the committee are here to cross-examine me.

I mentioned in the course of my statement the comparatively low voter turnout in New York County, which embraces part of New York City, as I understand it, which is commonly called Harlem. I also stated that the North Carolina Advisory Committee on Civil Rights had stated that the disparity between the registration and voting of Negroes and whites in North Carolina was due in large measure to apathy. It would seem to me that you might infer from these figures about Harlem that apathy prevails there because certainly there are no sinful southerners to impede their way to the polls. They are certainly free to vote in New York.

Unless there is somebody here who wants to cross-examine me, we will now take a recess until 10:30 a.m. Monday.

(Whereupon, at 4:04 p.m. the committee recessed to reconvene at 10:30 a.m., Monday, April 5, 1965.)

VOTING RIGHTS

MONDAY, APRIL 5, 1965

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to recess, at 10:35 o'clock a.m., in room 2228, New Senate Office Building, Senator Sam J. Ervin presiding.

Present: Senators Ervin, Hart, Dirksen, and Fong.

Also present: Palmer Lipscomb, Robert B. Young, Thomas B. Collins, professional staff members of the full committee.

Senator ERVIN. Let the record show that the chairman has asked me to preside in his absence. The meeting is called to order.

The first witness scheduled for today is Senator Williams of Delaware, who is presenting an amendment to the bill S. 1564.

(The amendment to S. 1564 follows:)

[S. 1564, 89th Cong., 1st sess.]

AMENDMENT Intended to be proposed by Mr. WILLIAMS of Delaware to S. 1564, a bill to enforce the fifteenth amendment to the constitution, viz: At the appropriate place add a new section as follows:

Whoever gives false information as to his name, address, or period of residence in the voting district for the purpose of establishing his eligibility to register or vote, or conspires with another individual for the purpose of encouraging his false registration or illegal voting, or pays or offers to pay or accepts payment either for registration or for voting shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

[S. 1564, 89th Cong., 1st sess.]

AMENDMENT Intended to be proposed by Mr. WILLIAMS of Delaware to S. 1564, a bill to enforce the fifteenth amendment to the Constitution of the United States, viz: At the end of the bill add the following new section:

SEC. . It is the sense of the Congress that each of the several States should take immediate action to consider and enact appropriate legislation to provide that any citizen of the United States who has been a resident of such State, or any political subdivision thereof, for a lesser period than that required under the laws of such State for registering for or voting in an election for electors of President and Vice President or for Senator or Representative in Congress, and who is otherwise qualified to register for an vote in such election, shall nevertheless be entitled to vote in such election if he was either eligible to so vote in another political subdivision of the same State, or in another State, immediately prior to his change of residence or if he would have been eligible to so vote if he had continued to reside in such place until such election.

STATEMENT OF HON. JOHN J. WILLIAMS, A U.S. SENATOR FROM
THE STATE OF DELAWARE

Senator WILLIAMS. Thank you.

Mr. Chairman, I appreciate very much having the opportunity to appear before your committee to urge your support for Amendment No. 57 to S. 1564, the "Clean Elections" amendment of the voting rights bill.

The amendment itself is quite brief, and I would like to quote it in full at this point:

Whoever gives false information as to his name, address, or period of residence in the voting district for the purpose of establishing his eligibility to register or vote, or conspires with another individual for the purpose of encouraging his false registration or illegal voting, or pays or offers to pay or accepts payment either for registration or for voting shall be fined not more than \$10,000 or imprisoned not more than 5 years, or both.

I have always been in favor of guaranteeing to every American citizen an equal opportunity to participate in the election process, but I feel just as strongly that this guarantee is meaningless if that vote is not counted properly, or if that vote is effectively canceled by a vote that is illegally cast, or if another person illegally registers to vote. I feel that the Congress, in its efforts to see to it that the integrity of a man's right to vote is protected, is obligated to see to it that the integrity of his vote itself is protected.

Amendment No. 57 addresses itself to this problem by making it a Federal offense for anyone to give false information as to his name, address, or length of residence in a particular election district. Under the terms of the amendment it would also be a Federal offense for anyone to conspire with another to register falsely or to vote illegally. Thirdly, the amendment would provide a penalty for anyone offering or accepting money or something of value in exchange for registering or voting.

The abuses which this amendment seeks to correct are not sectional in nature. The amendment is not aimed at one part of the country or another. It is aimed at a condition which we know exists and which continues to exist despite the valiant efforts of many local officials to stamp it out.

Nevertheless, it is either the lack of sufficient legal authority or the actual connivance of some in illegal acts which bring about the condition this amendment seeks to remedy. If, then, local officials either do not or will not take appropriate action to curb or prevent such acts, it becomes necessary for the Congress to act.

Recently there came to my attention a report of the Election Research Council, Inc., dealing with the 1964 elections in Arkansas. I wish to quote brief portions of the report—not to point the finger at the State of Arkansas, but simply because the report contains examples of the type of thing which we should be seeking to prevent.

For example,

the nonpartisan report states,

anyone could purchase poll tax receipts for an assortment of gravestones, and then apply by mail for absentee ballots. The county clerk, seeing that the applicants were listed in the poll book, would then send the ballots and voters' statements to the designated address. The ballots would be returned and counted.

It is generally agreed,

the report continues,

that there was more purging of absentee ballots this general election than ever before.

But according to the report,

despite this widespread casting out of ballots, our preliminary studies indicate that the total of 30,930 ballots actually counted was bloated with fraudulent and invalid votes * * * It is doubtful that there were 10,000 valid absentee votes cast in the general election of 1964.

I repeat that I have not quoted from the Arkansas report to indicate that conditions are worse in Arkansas than anywhere else. It just happens that the Arkansas report was called to my attention and it contains excellent examples of voting abuses which unfortunately can be found in too many parts of the United States today.

As a further example, I quote from an editorial which appeared in the Chicago Tribune on Saturday, March 20, 1965. The editorial says in part:

Alabama and the other States of the Deep South are not the only places where citizens are deprived of their right to vote and to have their votes counted honestly. At every election in Chicago thousands of Negroes and other citizens are intimidated and bribed by precinct captains. Illiterate voters and voters who swear they are illiterate are followed into the polling booths and the voting machines are pulled for them.

Another method of controlling votes, the editorial continues,

is particularly effective among voters who are receiving public welfare payments or living in public housing. They are visited in their homes, asked to sign ballot applications, and then told they need not appear at the polls. Their votes are cast for them early on the morning of election day.

The same newspaper, in an editorial which appeared last fall, summed up this sort of thing as succinctly as possible. The Tribune said, "Election fraud is not occasional, or accidental in Chicago. It is a way of life." It is, I think, a way of life in too many parts of the country today and one which honest men must bring to an end immediately.

Mr. Chairman, we make a mockery of the democratic process if we close our eyes to such abuses of the ballot. We agree, I think, that it is wrong to deny a man the right to vote on account of his race or color and in fact the Constitution forbids it. But is it any less wrong for abuses such as those cited above to continue? If the Congress is going to enact legislation in this field to guarantee a man his voting rights, can we fail to guarantee at the same time that the vote he casts will be cast in a clean election, will be properly tabulated and counted, and will not be diluted by an illegally cast ballot? Is a man any better off when his ballot is canceled by an illegally cast ballot than he is if he does not vote at all? Who can forget the famous incident in Chicago in the 1960 election when in one precinct 32 votes were cast although the voting list showed only 22 qualified voters?

Such incidents are every bit as much a blot on the American image and the democratic process as are instances of the denial of the right to vote based on race or color. Both must be stamped out, and the sooner the better.

Our election process, at best, is rather inefficient, concludes the aforementioned report of the Election Research Council, Inc.—

but it marks the difference between our democratic society and totalitarian systems. The voice of the people can best be heard through the ballot, and we

should never condone or close our eyes to any condition which would pollute or adulterate the integrity of the vote in any election on any candidate or issue.

I thank the committee for the opportunity of expressing the support of this and urging the adoption of this amendment as a part of this bill.

Senator ERVIN. The Chair wishes to commend you in offering the only amendment thus far offered which is not directly aimed at only one section of the country.

Senator WILLIAMS. I might say this problem is not aimed at one section and it is not centered in one section of the country. It is a problem which we have throughout the country and one which I am hoping the Senate will take advantage of this situation and try to correct.

Senator ERVIN. I certainly agree with the feeling that Congress is going to legislate in this field, it ought to have legislation which will take care of all abuses instead of singling out one abuse.

Do you have any questions, Senator?

Senator DIRKSEN. I was going to commend the distinguished Senator from Delaware and to observe that under section 11(e), the bill provides "Any statement made to an examiner may be the basis for a prosecution under section 1001 of title 18, United States Code."

Now, that section of the Code does deal with this but does not go as far as the amendment suggested by the Senator from Delaware. Frankly, I am quite glad that the language is thus offered. We have had this discussion before. It does occur to me that in order to reach some of these almost infamous situations, you can only do it by a bill of such dimensions that it actually would become a deterrent. When the word gets around that somebody actually apprehended is really taking a chance on a long time looking out, instead of looking in, together with a fine, I think it will bring them to their senses and it will apply to the whole country, as it should. Because as the Chicago Tribune editorial points out, we have had our troubles from one election period to another.

But may I ask, have you had comparable experiences, for instance, in your State?

Senator WILLIAMS. Yes; we have had not exactly to the extent that I have described here, but I think we might just as well be realistic. This condition at various times has existed in all of our States. I think that all of the Members of the Senate recognize that, at some time or other, we have had situations which are not being adequately dealt with under existing law. As I have stated before, whether that is a lack of proper authority or the lack of enthusiasm on the part of the State to do it, I do not know. But anyway, I do feel that while we are dealing with this problem, this is an excellent opportunity to take a constructive step toward clean elections.

As you pointed out, I am aware of the section which is in the bill. I would favor that as far as it goes, but as you so ably pointed out, that is only effective when this particular bill is triggered into action in a particular area. I think that this problem is with us. It is with us in Delaware, Illinois, California, Chicago, New York, wherever it may be. I think that while I am in favor of giving every man the right to cast his vote in this country, I think he also has a right to be sure that it is going to be counted and that that vote, when it is cast, is not nullified

by a vote cast illegally in another direction. For that reason, I made this amendment intentionally applicable to all of the 50 States in the Union.

Senator DIRKSEN. Have you encountered up there the experience of circulating registrants and circulating voters, where they load them in a car, register them first in one place and then another, and subsequently carry them around on election day so that they can vote a good many times?

Senator WILLIAMS. Yes; shuttling them back and forth with buses on election days, and it is hard to catch them and usually their vote is cast before it is too late. We had an experience in our State at one time, to show this is not centered in any particular area of the country, where after a major registration drive, we ended up having more people registered in the city of Wilmington than there were adults in the city that could have qualified possibly.

Now, those conditions should not exist and I think that it behooves this Congress to take appropriate steps in dealing with this problem now. I know of no more appropriate time than to make this a Federal crime for anyone who registers illegally for the purpose of making himself available where he can cast an illegal ballot, or for anyone who conspires with this group to try to get them to do it.

Senator DIRKSEN. Well, I can say to you, speaking for myself, that your suggested language will certainly have good attention. In the general preparation of this bill, at the various meetings that have been held, this whole question of penalties has been discussed from one time to another. I hope before we conclude our labors, we can agree upon a penalty clause which not only has teeth in it, but which will apply to the whole country and at long last get some beneficial results.

Senator WILLIAMS. I thank the Senator.

Mr. Chairman, if I may, in connection with one other problem—

Senator ERVIN. Could I interrupt you for just one moment here?

All the other provisions in this bill in its present form only apply to 6 States and 34 counties in North Carolina. Would you object to a clarifying amendment adding an additional sentence to your proposed amendment to say this section of the bill shall apply to the entire country, and not to the portion covered merely by section 3(a)?

Senator WILLIAMS. This amendment was designed to cover the entire country, because I think it should apply to the entire country. That was my intention at the beginning; yes, sir.

Senator ERVIN. You do not object to making that clarifying amendment to make it clear beyond any doubt?

Senator WILLIAMS. If it is necessary to clear it beyond any doubt, I not only would support it, I would want it included. It is my understanding that the amendment does apply to all of the 50 States under all circumstances, but if it does not, I most certainly would support its clarification; yes, sir.

And I might, for just a moment, we have one other problem which I am not going to discuss this morning, but I will mention it to the committee, I am sure you are aware of it. That is that many people who are moving from one area of the country to another in the election year are disqualified for voting because they lose their status in the State in which they have been residing and paying their taxes and

then, when they move over to their other State—maybe they are transferred by their company with which they are working—they are not eligible to vote. We have a disfranchised group of citizens in all of our States who, under our State laws, are not qualified to vote. I have worked with the legislative council and thus far, we have been unable to come up with any language which could correct this, because they feel that perhaps it is one which would have to be dealt with at the State level. But they did prepare a resolution here that it would be the sense of the Congress that the States should take immediate action to consider the enactment of appropriate legislation to handle this problem. If I may, I would like to submit this for the study of the committee and whatever consideration you may feel we could appropriately deal with in this particular bill. I am not trying to handicap this bill with something which would make it unworkable, but I do think this is a problem which all of us together may give serious thought to.

Senator DIRKSEN. I think you are right.

Senator ERVIN. I rejoice and say the State of North Carolina has a number of bills with respect to this. I am not sure, however, that under this bill, North Carolina would be enjoined from permitting that to come into effect until it could get permission from the district court up in the District of Columbia to pass on it.

Senator WILLIAMS. I am submitting this suggested resolution for your consideration, because it is a problem with which we are dealing. I thank you, very much.

Senator ERVIN. I am offering in evidence a bill from the chairman of the board of elections in North Carolina. Such a bill may be prevented from going into effect by the district court sitting in the District of Columbia. Under S. 1564 that bill, which would allow all the people residing in North Carolina for something like 90 days to be allowed to vote (could not be effective until North Carolina came up here and brought a suit against the United States of America for the purpose of having it adjudged that North Carolina is still a member of the Union and has the right to legislative power given to it by its own constitution and reserved to it by the Constitution of the United States. That is to illustrate how ridiculous this bill is.

Senator WILLIAMS. I thank the committee.

Senator ERVIN. The next witness is Senator John Stennis of Mississippi.

STATEMENT OF HON. JOHN STENNIS, A U.S. SENATOR FROM THE STATE OF MISSISSIPPI

Senator STENNIS. Mr. Chairman, I consider it a privilege to appear before this committee and I thank you for this privilege this morning. Ordinarily, I do not take a great deal of time and I am not going to talk extensively this morning, Mr. Chairman. But I do have the privilege of representing one of the States that is included in this bill and I do want the committee indulgence for a little more time than I would ordinarily ask for.

Mr. Chairman, I want to call the attention of the committee to the fact that the Civil Rights Act of 1964 as to voting rights will take care of almost every and any given situation that can or will arise with reference to voting rights throughout this Nation. I think that

is generally recognized; it was when the bill was debated; when it was passed. I think it is recognized by the Attorney General that drew that bill, particularly the voting rights part. I think it is recognized now. The power of the Department of Justice and the Federal Treasury is behind that title. They can file suits in any precinct or city or county or State and can proceed and effectively proceed in meeting any situation that is being done. The law has not been found to be inadequate in any respect, any major respect, but here, all of a sudden, we have this march in Alabama and a march here in front of the White House, and people lying down in the corridors of the White House and a joint session is called at night and we have the unusual spectacle there of a bill that has never been drawn and presented not only to the Congress but to the American people, with the court there, at least the majority of them. This is extraordinary and unusual, Mr. Chairman. All of a sudden, here a bill shows up 3 days later with 66 Members of our honorable body, and honored Members, already as signers and cosigners of legislation. As busy as we are around here, I hardly see where they had a chance to read it, much less digest it or more less check it against the Constitution of the United States. So I cannot see, as one who has been around here a good many years, I cannot see any major thing behind this bill in view of the present law except it is a political contest between the Democratic Party and the Republican Party as to who is going to share the most in these newly elected, newly voting members of the colored race. I do not have any doubt about that. I see every evidence of it from the White House through the rest of the Democratic Party and through the Republican Party, too.

Senator ERVIN. The Wall Street Journal suggested in an editorial the other day that the Republicans would get credit for the bad law and the Democrats would get credit for good intentions.

Senator STENNIS. Well, I think that is a major part of the consideration of this bill, especially when it is not needed, drawn on a wave of emotionalism and it leaves the Constitution of the United States a shambles. I think it is a product, at this particular time, of this wave of sentiment and emotionalism about voting. We have had these waves before. They have had them in other countries with our form of government. But the idea now is that everyone ought to be voting regardless of qualifications, regardless of the Constitution of the United States provisions. There is a downgrading, always a downgrading of those qualifications, making them less and less and less, and an upgrading of deficiencies. It is down with requirements of the Constitution.

Why, the most that could be said, the most friendly thing that could be said about this bill and the Constitution is that it merely suspends the Constitution. And I understand that one Senator has been quoted to that effect, that it does not repeal it, it does not ignore it, it just suspends it.

I heard Mr. Nixon on television the other day, and I speak with all deference to him as a former Senator and former candidate for President of the United States, when they raised the question with him about amending the Constitution, why, he says, there is not time to amend the Constitution—there is not time to go that way. We will have to go the other route. With all deference to him, I think that is

loose and reckless language to be applied to the constitutional question of this magnitude, especially where it is so plain in the Constitution as to where the power lies with reference to qualifications.

I think, Mr. Chairman, the heart of our whole system is to follow the Constitution of the United States as a guide. Certainly, we cannot all interpret it just the same, but to follow it as a general guide is the heart and soul of our system. Whenever we fail to do that, and we are in so many ways, we are destroying our system.

I have a recent quote here from the late Justice Frankfurter. He said, "Those who pass laws not only are under a duty to pass laws, they also are under a duty to observe the Constitution."

So certainly, we cannot dismiss these principles here with the bland remark that, "Well, that is a matter for the court." The positive duty is right here on our doorstep.

Senator ERVIN. I do not want to interrupt you, but how can a Member of the Senate or Member of the House of Representatives keep his oath to support and uphold the Constitution without measuring any laws he votes for alongside the Constitution?

Senator STENNIS. I do not think it can be done, and, certainly, it should not be done. But a great deal of the prevailing sentiment of today is, well, that a lawyers' talk; that is, lawyers' talk; the courts will pass on the constitutionality of it and we have to get to the practical side of things. But here the provision is so plain and they are recognized on the face of this bill itself. When they try to avoid the Constitution by more or less suspending it, that we are going to let it come back into effect after these qualifications that the States have prescribed whenever a court decides that a State is doing certain things and not guilty of certain wrongs.

Senator DIRKSEN. Well, Senator Stennis, is not the nub of the question, after all, with respect to Members of the House and Senate, what their own estimate is of the constitutionality of the given problem? We hold up our hands and take an oath to uphold and defend the Constitution.

Senator STENNIS. Yes; they are studied estimates, Senator. I said that this bill apparently was hastily put together and sent in here with this great number of authors. They had not had much chance, not much chance to really study it and put it down beside the Constitution of the United States and squared with it. Those that are not lawyers, I do not see how they had a chance to consult with someone else for advice and counsel on the subject. I say that the bill on its face recognizes that that is an invasion of the direct mandate of the Constitution with reference to the qualifications of electors being decided by the States, in that it more or less tries to suspend, suspend those qualifications for a time. It just states on its face that they shall not have literacy tests at all, regardless of what the law of the State says; they shall be suspended and not used for a period. It does not say that as to all States, which is another gross violation of the Constitution. How could the Congress have the power to legislate one set of rules here on a major matter of that kind, for one State, and another set of rules for another State?

Senator DIRKSEN. To conclude the observation that I started, you recall that there are sharp differences of opinion with respect to title 2, the accommodations title, in the Civil Rights Act of 1964. It gave

me some difficulty, I must say. However, when the time came, notwithstanding that difference of opinion in the Senate, the Court very quickly found that title constitutional. In fact, it was a unanimous decision, as I recall. So we can have our differences about constitutionality and differ very honestly and honorably. I think we are quite within our oath when we do it and quite within the sense of responsibility in doing it. But at long last, the final determination is made by the High Tribunal.

Senator STENNIS. My observation certainly gives room for the man who has honestly considered a thing and weighed it. I said there would be differences of final beliefs, but that we could not meet our obligation by merely saying that this is a matter for the courts to decide. We have to decide it, every man has to make the decision himself, Senator, on that point.

Senator ERVIN. May I interject myself here to say I agree with Senator Dirksen's observation, that each Member of Congress has to decide whether it is constitutional for himself. I am frank to state that the interstate commerce clause gives Congress the power to regulate interstate commerce, which is the movement of persons, goods, and communications from one State to another. I think that the Founding Fathers would turn over in their graves if they received information that the interstate commerce clause permits Congress to regulate every human activity anywhere in the United States, from that of business to that of erecting stones to mark the graves of the departed. Yet that is precisely what the Supreme Court held in the civil rights cases, for all practical intents and purposes. And they have gone beyond that in the *Filburn* case when they held that a man could not grow wheat upon his own lands for his own consumption and that of his domestic animals. If that is transportation of goods and humans from one part of the United States to another, I have no capacity to comprehend.

Senator STENNIS. My point on the Constitution is that those who have signed the bill should reconsider whether or not this act is justified on the Constitution of the United States, particularly as it flirts and weighs and nullifies those provisions of our Constitution which says that the States, the States alone, shall have the authority to set the qualifications of electors.

Now, there are others that Senator Williams touched on a little, but there are others that ought to be heard with reference to this matter. That is the countless millions of electors that are qualified in every way under their own State law and have met these requirements and are registered and do vote. They have a right not to have their vote diluted or canceled out by someone who is brought in under a political bill like this, en masse, with a suspension of the rules and suspension of the law, suspension of the Constitution of the United States, and their names put on the registers and voting.

My plea there is for those who are already on and already qualified; they have met the conditions, they have prepared themselves for citizenship in the way that is required for law. Certainly, they are entitled to some consideration and some protection with reference to their ballot.

Now, Mr. Chairman, that brings me to a more formal part of my statement here, and this question of the Constitution and each Member

deciding it, I am so concerned about that that I have set forth some cases here that I want briefly to discuss. They are familiar to most of you already, but I want to discuss them at some special length.

Mr. Chairman, on our system of government, there is an absolute condition precedent to the enactment of all legislation by the Congress. There must be a constitutional grant of authority to the Congress, either express or necessarily implied, for the passage of the legislation. The most compelling problem may not be the subject of Federal law in the absence of constitutional authority.

I yield to no one in my belief that all citizens who are qualified under the law, whatever legal requirements may be established thereby, should be allowed to register and vote without any discrimination of any kind. I have always supported this position and I do so now. The existence of a problem, even assuming such a problem exists, does not provide the constitutional authority for Congress to legislate; that authority must be found within the four corners of our basic law, the Constitution of the United States.

The Supreme Court has expressed this principle on many occasions and has never upheld the validity of an act of Congress simply because it sought to accomplish a desired result. In the famous case of *Carter v. Carter Coal Co., et al.*, 298 U.S. 238, 56 S. Ct. 855, 80 L. Ed. 1160 (1936), for example, the Court spoke of its duty to determine the constitutionality of legislation and stated:

In the discharge of that duty, the opinion of the lawmakers that a statute passed by them is valid must be given great weight, but their opinion, or the court's opinion, that the statute will prove greatly or generally beneficial is wholly irrelevant to the inquiry (298 U.S. 238, 297).

I think the main motivation behind those, and I think—I give them a good motive, that they are sponsoring this bill as signers, that they want to do something about a situation. Now, the Supreme Court of the United States says that the fact that they want to do something or have a good motive is even wholly irrelevant to the real inquiry. The real inquiry is do they have the power, the Congress?

It is true, of course, that within constitutional bounds the Congress is free to enact any legislation which is reasonably adapted to meeting a problem. Attorney General Katzenbach, in his testimony to the House and Senate Judiciary Committees on S. 1564, gave great weight to the fact that the means chosen by Congress to accomplish a desired result are solely a matter of legislative discretion. This is certainly true, but it is valid only to the point that Congress does not exceed the grant of its constitutional authority. In declaring unconstitutional the Railroad Retirement Act of 1934, the Supreme Court very concisely stated:

The fact that the compulsory scheme is novel is, of course, no evidence of unconstitutionality. Even should we consider the act unwise and prejudicial to both public and private interest, if it be fairly within delegated power our obligation is to sustain it. On the other hand, though we should think the measure embodies a valuable social plan and be in entire sympathy with its purpose and intended results, if the provisions go beyond the boundaries of constitutional power we must so declare. (*Railroad Retirement Board et al. v. Alton Railroad Co. et al.*, 295 U.S. 330, 360 (1935)).

I am sure everyone agrees generally with that law, Mr. Chairman. That is settled law. But my point is if we run by these signs in our eagerness and our desire to do something about the situation. I think

that is just what we are doing here now. I want to specifically devote my statement to the following points:

1. The power to regulate elections and establish qualifications and procedures to vote is solely within the power of the respective States, subject only to article I, section 4; the 15th amendment, and the 19th amendment to the Constitution.

2. S. 1564 far exceeds the delegated power of Congress as conferred by article I, section 4, and the 15th and 19th amendments.

3. S. 1564 violates the spirit if not the letter of the following constitutional principles:

(a) the prohibition against ex post facto laws and bills of attainder;

(b) the separation-of-powers doctrine;

(c) the right of judicial review;

(d) the principle that ours is a government of laws and not of men.

It is axiomatic that the Federal Government has only those powers delegated to it by the Constitution. Absent an express or implied grant of authority, there is no Federal power. On the contrary, the respective States are the repositories of residual power; that is, authority not given to the Federal Government, nor denied to the States, remains in the States or in the people without enumeration in the Constitution. The 10th amendment forever set this proposition at rest. Further, the doctrine was given clear enunciation in *Carter v. Carter Coal Co. et al.*, supra, wherein the Court said:

The general rule with regard to the respective powers of the Constitution is not in doubt. The States were before the Constitution; and, consequently, their legislative powers antedated the Constitution. Those who framed and those who adopted that instrument meant to carve from the general mass of legislative powers, then possessed by the States, only such portions as it was thought wise to confer upon the Federal Government; and in order that there should be no uncertainty in respect of what was taken and what was left, the national powers of legislation were not aggregated but enumerated—with the result that what was not embraced by the enumeration remained vested in the States without change or impairment (298 U.S. 238, 294).

Applying this principle to the question of voting, it is clear beyond doubt that only the respective States have the authority to establish the qualifications of voters.

I quote here now two provisions of the Constitution with which you are all familiar, article I, section 2 of the Constitution and the 17th amendment, having that clause that electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

These two provisions of the Constitution expressly provide that those who vote for Members of the House and Senate shall have the same qualifications as are required of electors of the most numerous branch of the State legislature. Without question, these provisions give to the States the authority to set the qualifications for electors. I emphasize that over and over, because this bill takes away from the States the State law, the power that they have exercised in setting up the qualification of electors. It does not undertake to say that those qualifications are absurd or invalid or remote or not relevant. It just suspends them, pulls them out and says they shall not be operative in these States, whereas in New York, and as Senator Robertson and others

have pointed out, they have more stringent qualification requirements for literacy before a person can be a qualified elector and the bill does not touch topside nor bottom. According to the figures here from this editorial in the Washington Post, it will leave 330,000 Puerto Ricans out of 480,000 potential voter registration ability, leave them untouched and they will not be able to qualify under State law regardless of their intelligence, patriotism, or anything else, because of their inability to be able to comprehend the English language to the extent of, I believe, reading the Constitution of the State of New York.

Now, as I say, it not only violates the Constitution when it sets aside the provisions of some of the States, but it compounds the injury and goes another step in violating the Constitution of the United States with its lack of uniformity. In other words, certain areas are just picked out for the purpose of passing penal legislation. And that runs all the way through this bill.

It is also established without question that these sections are the only provisions of the Constitution dealing with the authority to determine the qualifications of voters, subject only to the 15th and 19th amendments. The 19th amendment, of course, prohibits discrimination on the basis of sex and it is not relevant to this discussion. It is just as clear that under these provisions and the Supreme Court's interpretation thereof the several States have the exclusive power, subject only to the prohibition of the 15th amendment, to decide who shall vote in both Federal and State elections and to set the qualifications which must be met. The Supreme Court has affirmed and reaffirmed this principle in many decisions. In *Pope v. Williams*, 193 U.S. 631 (1904), for example, the Court stated:

The Federal Constitution does not confer the right of suffrage upon anyone, and the conditions under which that right is to be exercised are matters for the States alone to prescribe * * * (193 U.S. 621, 638).

The Court has likewise specifically ruled that requiring all voter applicants to pass a literacy test is a legitimate and permitted exercise of the States' authority to set voting qualifications. In *Guinn v. United States*, 238 U.S. 347 (1915) the Court dismissed any question on this subject by stating:

No time need be spent on the question of the validity of the literacy test considered alone since as we have seen its establishment was but the exercise by the State of a lawful power vested in it not subject to our supervision and, indeed, its validity is admitted (238 U.S. 347, 366).

Further, the Attorney General of the United States, while testifying to the Senate Judiciary Committee on July 24, 1963, during consideration of the then pending civil rights bill, stated—the Attorney General at that time was the gentleman now presently Senator Robert Kennedy—

I think there is no question that it is in the power of the States to establish the qualifications of its voters and the State does have the authority to establish a literacy test.

At another point in his testimony the Attorney General also stated that—

I don't believe that the Federal Government can establish the qualifications for voting * * *.

And, indeed, the present Attorney General affirmed these principles in testifying before the Senate Judiciary Committee on the bill now under consideration.

Based on these constitutional provisions, decisions of the Supreme Court, and the opinions of the present Attorney General and his immediate predecessor, I believe all members of this committee will agree that the several States have the exclusive jurisdiction to determine voter qualifications, specifically including the right to establish literacy tests. This being true, let us now turn to a consideration of the only restriction on that authority, the 15th amendment to the Constitution.

Soon after the passage of the 13th, 14th, and 15th amendments, Congress enacted a number of enforcing statutes. Likewise, the Supreme Court was quickly called upon to interpret these new constitutional protections, and from the date of its first decision in *The Slaughter-House cases* in 1873 (*The Butchers' Benevolent Association of New Orleans v. The Crescent City Livestock Landing and Slaughter-House Company*, 83 U.S. 36) to the present time, the Court has without exception held that: (1) the 14th and 15th amendments prohibit action of the States, but not of individuals, which deny the rights secured thereby; and (2) the legislative power of Congress thereunder is limited to "appropriate legislation" designed only to prohibit violations thereof based on race or color. Any act of Congress which exceeds these specific limitations is invalid.

The 15th amendment, of course, provides that the right of citizens to vote shall not be denied "on account of race, color, or previous condition of servitude." This guarantee does not enlarge the power of the Federal Government nor does it diminish the power of the States except to the extent that it prohibits voting discrimination because of race. As the Court so clearly stated in *Pope v. Williams*, *supra*:

Since the 15th amendment the whole control over suffrage and the power to regulate its exercise is still left with and retained by the several States, with the single restriction that they must not deny or abridge it on account of race, color, or previous condition of servitude (193 U.S. 621, 632).

Senator ERVIN. May I interrupt at this point?

Senator STENNIS. Yes, sir, certainly.

Senator ERVIN. I will ask you if the Supreme Court has not held in a number of cases that the 14th amendment and the 15th amendment merely prohibit certain actions on the part of the State and that they authorize the Congress to pass the legislation which is appropriate to enforce the prohibition, but do not authorize Congress to take control of the obligation of a State under the 14th amendment to accord everyone due process of law or to accord one equal protection of the laws or to take charge of procedures for voting in State and local elections?

Senator STENNIS. The Senator is correct and the 15th amendment, the congressional power under it is limited, as I was saying here, to those discriminations because of race and color and none other.

Senator ERVIN. In other words, the decisions hold that the only power to adopt appropriate legislation for the enforcement of the 15th amendment is the power to prevent the State from doing what that amendment prohibits it from doing and not the power to adopt a set of affirmative laws to take charge of State and local elections?

Senator STENNIS. The Senator is undoubtedly correct. The only limitation on the power of the States with the passage of the 15th amendment is that no one be denied the privilege of voting simply because of race or color.

Senator ERVIN. And if the power to suspend the law or provision of the Constitution in here exists in Congress, then Congress can suspend a provision of the Constitution for 100 years or 1,000 years or forever, can it not?

Senator STENNIS. Well, it is the most dangerous principle that we can possibly get into. It leaves the Constitution a shambles.

Senator ERVIN. And does not the Senator recall that the Supreme Court of the United States held in what in my opinion was the greatest decision that was ever handed down, *Ex parte Milligan*, that the power to suspend any part of the Constitution does not exist?

Senator STENNIS. That is correct, even in time of war.

Senator ERVIN. That the Constitution is a law equally for people and rulers alike, both in times of peace and war?

Senator STENNIS. Yes, and the fact that there is not time to pass an amendment is totally irrelevant, however great the demand might be.

Section 2 of the 15th amendment gives to the Congress power to enforce the prohibition of that amendment by "appropriate legislation." In *United States v. Reese, supra*, the Supreme Court clearly spelled out in unmistakable language that such legislation must be restricted to limiting denials based on race or color. That case arose as the result of the act of Congress of May 31, 1870 (16 Stat. 140) which was designed to enforce the 15th amendment guarantee. The first and second section of that act, respectively, provided that all persons shall have the right to vote without distinction as to race, color, or previous condition of servitude, and established punishment for any officer who failed to give all persons the opportunity to vote without regard to race or color. Section 3, however, provided that the offer of any person to perform any act necessary to qualifying to register, and the subsequent act of an officer in refusing to receive or permit such performance, shall be considered performance of the act. Section 4 provided punishment for any person who wrongfully attempted to prevent any person from doing an act necessary to be done to qualify to vote. Neither section 3 nor section 4 was in any way limited to prohibiting denials of the right to vote because of race or color.

The Court prefaced its consideration of whether these two sections constituted "appropriate legislation" by stating:

It is not to be contended, nor can it be, that the amendment confers authority to impose penalties for every wrongful refusal to receive the vote of a qualified elector at State elections. It is only when the wrongful refusal at such an election is because of race, color, or previous condition of servitude, that Congress can interfere, and provide for its punishment. If, therefore, the third and fourth sections of the act are beyond that limit, they are unauthorized (92 U.S. 214, 218).

The Court then examined the act of 1870 and found that sections 3 and 4 were not expressly limited to prohibiting discrimination based on race or color, and it further found that those sections were not limited by the first and second sections. The Court therefore declared the act of 1870 unconstitutional. In *United States v. Harris*, 106 U.S. 629 (1882), the Court stated, with reference to the *Reese* case, that:

The ground of the decision was that the sections referred to (secs. 3 and 4) were broad enough not only to punish those who hindered and delayed the enfranchised colored citizen from voting on account of his race, color, or previous condition of servitude, but also those who hindered or delayed the free white citizen (106 U.S. 629, 642).

Now, Mr. Chairman, let me turn to a consideration of the provisions of S. 1564 and see if they can be reconciled with these constitutional principles. First of all, it should be noted that the authors of this proposal do not pretend to base it on any provisions of the Constitution except the 15th amendment. It is entitled "A bill to enforce the 15th amendment to the Constitution of the United States." In addition, the Attorney General stated in his testimony before the House Judiciary Committee, as shown on page 31 of the preliminary transcript, that "As drafted this is based entirely on the legislative provisions of the 15th amendment * * *"

Section 2 of S. 1564 simply declares that no voting qualifications or procedure shall be used to deny the right to vote on account of race or color. This neither adds to nor detracts from the coverage of the bill. Section 3(a) provides, however, that no person, and I repeat for emphasis, no person shall be denied the right to vote in any election because of his failure to comply with any test or device in any State or political subdivision, in use on November 1, 1964, if less than 50 percent of the persons of voting age in that State or political subdivision were registered to vote on November 1, 1964, or if less than 50 percent of such persons actually voted in the presidential election of November 1964. This section contains no express limitation which restricts its operation to enforcement of the 15th amendment prohibition against denials of the right to vote because of race or color. It cannot be contended that it is so limited. In this respect, it is similar to section 3 of the act of 1870 which the Supreme Court interpreted in the *Reese* case.

We must look further, therefore, to determine if section 3(a) is limited by any other provision in the bill. Certainly it is not limited by section 2, which merely states a truism that no person shall be denied the right to vote on account of race or color. I submit that there is no other possible restriction on this provision; if this is true, S. 1564 cannot be considered appropriate legislation under the 15th amendment.

It has been contended by the Attorney General, of course, that the effect of section 3(a) is limited by the provisions of section 3(c) which provides that a State or political subdivision which is subject to 3(a) may file a petition for a declaratory judgment in a three-judge District Court in the District of Columbia. If that court finds that neither the petitioner nor any other person acting under color of law "has engaged during the 10 years preceding the filing of the action in acts or practices denying or abridging the right to vote for reasons of race or color" the court shall then declare that the State or subdivision involved is not subject to the terms of section 3(a). At first glance it may seem that this section limits 3(a) to prohibiting denials based on race or color; a closer examination reveals that 3(a) is not so limited. Suppose, for example, that the State of South Carolina, which comes within the terms of section 3(a), files a petition for a declaratory judgment. After trial, it is determined by the court that a Negro citizen of South Carolina was wrongfully denied the right to vote 6 years prior to the filing of the petition. Under the terms of 3(a),

South Carolina would not be entitled to a declaratory judgment removing it from the operation of section 3(a). Thereafter, for a period of 4 years, the State of South Carolina would be prohibited from applying to anyone, not just a Negro citizen, but anyone an otherwise constitutionally valid literacy test.

Now, Mr. Chairman, there is one of the key points from the consideration of the constitutional basis of this whole matter, that it absolutely suspends the clear operations of this provision of the Constitution of the United States, whether color is involved or not. That is where the legislation fails.

Senator ERVIN. I would like to ask you a question on that point and in so doing, I am going to accept the premise of the proponents of this bill that if 50 percent of the adult population of a State was not registered or voted in November 1964, it raises a presumption that the State engaged in denying or abridging the right to vote on the basis of race in respect to registration or voting for that election. Now, is there not a principle of law that it is a denial of due process not to allow rebuttal of a presumption?

Senator STENNIS. It certainly is. We have no system unless that is a valid premise.

Senator ERVIN. Is it not the effect of section 3(c) to provide that a State cannot rebut the presumption by showing there was no denial or abridgment of the right to register or vote in respect to the November 1964 election, but it has to show that at no time in 10 years has a single election official denied a single person anywhere within the borders of the State the right to vote on account of race or color?

Senator STENNIS. That is the requirement of the act.

Senator ERVIN. Is not that an impossible burden to carry, since the State would have to produce in the Federal court here in the District proof that every person registered, that no person who had applied for registration at that time had been denied the right to vote on account of race or color? Is that not an impossible thing to prove?

Senator STENNIS. It is impossible on its face and shows the absurdity of the provision.

Senator ERVIN. Is it not also an impossibility, compounded by the fact that a subpoena from the District Court in the District of Columbia would only run within the District and within 100 miles of the edge of the District?

Senator STENNIS. That is correct.

Senator ERVIN. And most of these States are farther away than that?

Senator STENNIS. That is correct, they are shut off without the compulsory process of the court.

I thank the chairman for his question.

Mr. Chairman, and gentlemen of the committee, this is the provision now that the sponsors of the bill refer to when they say all this is subject to judicial review. We put a proviso in there that everything here is subject to judicial review and that carries out the provisions of the Constitution of the United States. They not only reverse the order of due process of law and put the burden on the wrong party, but they bring him away and bring him into a jurisdiction far removed—it could be 3,000 miles—from their home into the court here in the city of Washington. And furthermore, they are denying the

process of court, compulsory process, which maybe could be remedied under that point, which under the present law he would not have. But it is a total reversal of the constitutional processes and in practical effect, a denial of judicial review.

Furthermore, in many of the States, there have been cases where it was judicially determined that as to this person or as to a few persons, there was discrimination and therefore, it is judicially determined already, in cases already decided and closed that in those States, why, this did happen and their mouth is closed, then, for 10 years; they cannot get their law into effect. As I said here, they have to go and apply this no literacy test not only to people that may be colored, but to white people or anyone else all alike.

In other words, it is a butchering, just a butchering on the provisions of State law that everyone concedes the Constitution places that power with them. It is an abandonment of judicial processes we have now on the books of law, that would test all these matters under judicial decision and processing.

Not only would the State or any political subdivision thereof, be prevented from discriminating against Negroes, neither could it fairly and constitutionally apply a literacy test to any citizen, Negro or white.

There can be no question, Mr. Chairman and gentlemen that the effect of this provision is to apply to cases other than that of denying voting privileges on account of race or color. This provision of the bill would not prevent the nondiscriminatory use of literacy tests, it would simply prevent their use at all. The power to do this is not given to Congress by the 15th amendment or any other provision of the Constitution.

The Attorney General, knowingly or unknowingly, admitted in his testimony to the House Judiciary Committee that the operation of section 3 is not limited to enforcing the protections of the 15th amendment. For example, he was asked a hypothetical question which set up a condition of obvious discrimination but one which was not within the 50-percent provision of section 3(a). When asked to give people relief in such situations, the Attorney General replied:

The reason that it is out (meaning the hypothetical situation) is that it does not fit the 50-percent figure. The reason we have not broken things down into whites and Negroes, which might be a preferable way of doing it, is that unlike the hypothetical case that you put, Congressman, we don't have those figures. I can't tell you and you can't tell me how many Negroes voted in Florida in 1904.

In other words, because those figures were not available, they took this other route here and made the blanket provision apply without that limitation of discrimination on account of race.

Again, on page 84 of the preliminary transcript, the following series of questions appear:

MR. LINDSAY. Now, to start a proceeding under section 3, I take it that you, as Attorney General, would have to start a proceeding, somebody would have to do something to begin the administration of this bill.

THE ATTORNEY GENERAL. Yes.

MR. LINDSAY. Now, I would take it that under section 3, you, as Attorney General, would have to make a finding unilateral, that there had been a 15th amendment violation; is that not true?

THE ATTORNEY GENERAL. Not a 15th amendment violation; no. Merely a finding that there were literacy tests and these statistics applied.

Now, may I call your special attention, this is not my words, this is the Attorney General, who drafted the bill. He said he would not have to make any finding to put it in operation that there was a violation of the 15th amendment, and that is what you are traveling under here in the bill. No, he would not have to do that, and I quote his words:

Not a 15th amendment violation; no. Merely a finding that there were literacy tests and these statistics applied.

That is all you have to do to trigger this bill, just go find a State where they have a literacy test and where they did not have the registration above 50 percent and you have a case under the bill. I say that you have not a case under the Constitution of the United States, under the 15th amendment. That is what the Attorney General said. Until you have a case as that, you are standing on unholy ground when you try to go in and pass a bill of this kind. It is not justified.

Senator ERVIN. If I will not disturb the Senator too much by interrupting, the Congressional Quarterly for March 31, 1965, which I just received this morning, contains a statement by Robert G. Dixon, Jr., professor of constitutional law, George Washington University. He is quoted as having said—

Even though the Constitution gives Congress the power to legislate, there are ends and means relationships. For instance, if the means chosen are not well adapted to the ends, are more stringent and broader than needed to accommodate the ends, the legislation may be invalid on due process grounds.

Senator STENNIS. Yes; that is another illustration of it.

Senator ERVIN. Now, are not there Federal cases that hold that a legislative body cannot create the presumption based upon a fact which the party against whom the presumption operates cannot prevent?

Senator STENNIS. Yes, sir; that is correct. You deny him due process of law if you treat him that way.

Senator ERVIN. A State or political subdivision can register people without any violation of the 15th amendment, but it has no power to compel those people to come out and vote; does it?

Senator STENNIS. That is correct.

Senator ERVIN. And does not the provision of this bill which triggers the bill into operation on the basis of the fact that less than 50 percent of the adult population are voting, prescribe a condition to be used as a presumption which the State or the political subdivision in question cannot possibly prevent or avoid?

Senator STENNIS. That is correct. It is therefore not one which can stand the test in law or court. It is unreasonable and beyond the control of the party involved, as the Senator said.

I submit, Mr. Chairman, that section 3 of this bill, in addition to exceeding the authority of Congress under the 15th amendment, is not reasonably adapted to accomplishing the desired result. The stated purpose of the bill is to prohibit the nondiscriminatory use of literacy tests and other devices which it is claimed have been utilized to deny suffrage rights of Negroes. But this bill does not purport to prevent the discriminatory use of such tests; it simply would prohibit the use of such tests at all in certain States. Under the unanimous decisions of the Supreme Court, the several States have a constitutional right to prescribe such tests. Congress cannot abolish by statute that which the States have a constitutional right to do. All Con-

gress can do under the 15th amendment is enact legislation to prevent the discriminatory use of these tests, and it seems evident that the provisions of S. 1564 are not reasonably and appropriately limited to that end.

Mr. Chairman, I do not want to take too much time. I do ask unanimous consent that certain cases here that I quote from and omit to that extent be included in the record at the proper place in my statement.

Senator ERVIN. Yes; the whole statement can be printed in the record in full.

Senator STENNIS. I thank the Chair.

It should be pointed out, of course, that while literacy tests would be abolished in the seven affected States, all other States may continue requiring the passage of such tests as a prerequisite to vote. New York, for example, may continue to disfranchise thousands of native Puerto Ricans. This effect of the bill is in itself highly discriminatory and unfair.

Not only does this bill exceed the authority of Congress under the 15th amendment, but it also contains provisions which are directly contrary to many principles of our system of government. It clearly violates the spirit, if not the letter of our Constitution.

One of the distinguishing features of English jurisprudence is that a person is presumed innocent until proven guilty. The burden of proof is on the prosecuting authorities, who must prove their case. This bill, however, reverses that procedure and requires proof of innocence on the part of those States which are automatically subject to the terms of section 3(a). On the basis of the arbitrary standards used in that section, the States of Louisiana, Mississippi, Alabama, Georgia, South Carolina, Virginia, Alaska, and parts of North Carolina, Arizona, Idaho, and Maine are proclaimed to be guilty of massive discrimination. Immediately upon enactment of this measure into law, these States would have to prove their innocence or be denied rights which are granted and reserved unto them by the Constitution. In this respect, S. 1564 is nothing less than a bill of attainder because it adjudges guilt by legislative fiat without proof of any evidence.

Section 3(a) of this bill also constitutes a measure in the nature of an ex post facto law, because it arbitrarily applies on the basis of a condition which existed in November 1964. In addition, section 3(c) would prohibit a State from proving that it is not now guilty of violating the 15th amendment unless it can prove that there has not been one single incident of voting discrimination during the past 10 years. In other words, if an election official in Georgia wrongfully denied someone the right to vote 8 years ago, the entire State would be subject to the provisions of this bill. It would not matter that the State could prove beyond question that it now has no discriminatory laws or that no one was being denied the right to vote in violation of the 15th amendment; it would still be adjudged guilty on the basis of an act which occurred 8 years ago and it would be subjected to new and different penalties from those imposed at the time of the commission of the wrongful act. This clearly embodies the concept of an ex post facto law, for as the Court stated in *Comings v. Missouri*, 71 U.S. 277 (1867):

By an ex post facto law is meant one which imposes a punishment for an act which is not punishable at the time it was committed; or imposes additional punishment to that then prescribed; or changes the rules of evidence by which less or different testimony is sufficient to convict than was then required (71 U.S. 277, 325-326).

Surely no one can deny that S. 1564 fits this description.

I realize, Mr. Chairman, that the constitutional prohibition contained in article I, section 9, against bills of attainder and ex post facto laws applies only to penal statutes. In a technical sense, therefore, this bill is not subject to attack as a bill of attainder or an ex post facto law. However, there can be no question that S. 1564 violates the spirit of this constitutional protection. I do not believe the Congress can expect other legislative bodies to honor the letter and spirit of our constitutional principles if Federal legislation is adopted which so flagrantly flies in the face of basic constitutional protections.

After the purely administrative determinations have been made by the Attorney General and the Director of the Census as directed by section 3(a), section 4 provides for the appointment of voting examiners by the Civil Service Commission. Subsection (a) thereof simply provides that whenever the Attorney General certifies that he has received complaints from 20 or more residents of an affected political subdivision alleging that they have been denied the right to vote on the basis of race or color, or that in his judgment the appointment of examiners is "otherwise necessary," the Civil Service Commission shall appoint as many examiners as it may deem appropriate in that political subdivision. Subsection (b) provides that the determination or certification of the Attorney General or the Director of the Census under section 3 or 4 "shall be final and effective upon publication in the Federal Register." This means, Mr. Chairman, that the decision of these two officials is not subject to any question, appeal, or judicial review of any kind whatever. Once it has been determined by the Attorney General, in his sole discretion that the appointment of examiners is necessary, no one can question that determination. Thus, it would be possible for the Attorney General, without any appeal from his decision, to disrupt the entire registration process in a State which has been determined subject to section 3(a).

Just what do sections 3 and 4 mean, Mr. Chairman? First of all, the former establishes guilt of massive discrimination on the basis of what clearly seems to me an arbitrary statistical finding. No proof of violating the 15th amendment is required; indeed, section 3(c) prohibits a State from proving it is not guilty of present discrimination if it can be shown that it discriminated in the past—as long as 10 years in the past. Once these determinations have been made, section 4 then empowers one man, the Attorney General of the United States, to require the appointment of Federal examiners to completely take over the function of registering substantial numbers of residents. This action of the Attorney General is not reviewable and no one can question his judgment that the appointment of examiners is necessary.

Of course, it has been stated many times that all a State need to do to avoid these harsh consequences is to come into court and prove that it is not discriminating. But, according to the testimony of the Attorney General himself, the States of Mississippi, Louisiana, and Alabama are precluded from doing this for almost 10 years, and the State of Georgia cannot come into court for approximately 5 years. Nor is

it any salvation for this bill's constitutionality for the Attorney General to say that the discretion granted to him will not be abused, for as Chief Justice Marshall so clearly stated:

* * * the constitutionality of a measure depends, not on the degree of its exercise, but on its principle.

Time does not allow me to discuss all of the unconstitutional provisions of this bill, but there are three more sections which demand consideration. Section 5(e), for example, provides that—

No person shall be denied the right to vote for failure to pay a poll tax if he tenders payment of such tax for the current year to an examiner, whether or not such tender would be timely or adequate under State law.

Although the Congress deemed it necessary to amend the Constitution to prohibit poll tax requirements, this bill attempts to do that very thing. If mere legislation cannot make the payment of current poll taxes illegal, neither can mere legislation abolish the requirement that such taxes be paid for past years. It is only a fiction to contend otherwise. In addition to this, the Attorney General has admitted that he cannot prove that the poll tax requirement has been used to discriminate in violation of the 15th amendment. In his testimony before the House Judiciary Committee, he stated that H.R. 6400, the companion bill to S. 1564, "is based on the 15th amendment and to eliminate poll taxes on the basis they have been used to discriminate, I think would be a difficult case constitutionally to prove and establish." He further stated that a poll tax requirement, as a matter of law, does not violate the 15th amendment. So he admitted that he cannot prove the discriminatory use of poll taxes and he admitted the legality of such a requirement. How, then, can it be contended that Congress can legislate on the subject in a bill which is entirely based on the 15th amendment? The simple answer is that Congress cannot enact such legislation based on the 15th amendment.

In addition to the legal objections to section 5(e), a hypothetical case demonstrates that it is, in fact, discriminatory itself. Mississippi requires the payment of poll tax for 2 consecutive years as a condition to vote. That is, a voter must have a receipt for the current year in which he votes as well as a receipt for the immediately preceding year. Suppose that citizen A, a Negro resident of the State, is eligible for listing by a Federal examiner under the provisions of this bill. He has not paid the poll tax in previous years but pays the current year's tax, even though it may be after the date prescribed by State law, and he is declared eligible to vote. Citizen B, however, has not been denied the right to vote on the basis of race or color, and he is qualified to vote in every way except that he failed to pay the required poll tax for the immediately preceding year. Citizen B is not allowed to vote. Thus, it is easily seen that this bill creates discrimination, the very thing it is designed to eliminate.

One of the provisions of the bill that is most destructive of constitutional principles is found in section 8. Under the terms of that section, no State or political subdivision which is subject to section 3(a) may "enact any law or ordinance imposing qualifications or procedures for voting different than those in force and effect on November 1, 1964," without securing a declaratory judgment in the Dis-

strict Court for the District of Columbia that such qualifications or procedures will not have the effect of denying or abridging rights guaranteed by the 15th amendment. Purely and simply, Mr. Chairman, this section would give to the Federal judiciary power to veto legislative acts of a State. This is not a judicial function, it is an executive function to be exercised solely by the Governor under the terms of State law. I do not think of anything that could be more out of keeping with the whole tone and substance of our system than to require States to come here and prove before a relatively minor court the so-called constitutionality of some proposal that they wish to enact before they can even enact it; the process is just the other way.

Mr. Chairman, I believe I have shown as clear as crystal, that the sole power of prescribing voter qualifications rests exclusively with the States. During our entire history, the legislative, the executive, and the judicial branches of our Government have all recognized this absolute rule without a single exception. It was reaffirmed by the Congress and by the States in 1963-64 in the proposal by the Congress and the adoption by the States of the anti-poll-tax amendment. It was expressly recognized by the judicial branch of the Government in the well-known *Lassiter* case decided in 1959.

We have shown, I think, that this bill sets aside and holds for naught certain valid qualifications for electors under State law. Such provisions, therefore, are made inapplicable.

To meet the void created by this usurpation of power in declaring these certain State requirements inapplicable, this bill goes into another unauthorized field and attempts to set up what is, in effect, a new set of requirements.

There I enlarge on the requirements under the examiner provisions, Mr. Chairman.

Still we are told that we must enact this bill, swiftly and without change, because there is a great need for new voting legislation. But need is not the test of constitutionality, and great social, economic, or political crises do not provide legislative authority not granted by the Constitution. I am reminded of the great wisdom of the Supreme Court when it stated in *A.L.A. Schechter Poultry Corp. et al. v. United States* (295 U.S. 495, 55 S. Ct. 847, 79 L. Ed. 1570 (1935)):

Extraordinary conditions may call for extraordinary remedies. But the argument necessarily stops short of an attempt to justify action which lies outside the sphere of constitutional authority. Extraordinary conditions do not create or enlarge constitutional power. The Constitution established a national government with powers deemed to be adequate, as they have proved to be both in war and peace, but these powers of the National Government are limited by the constitutional grants. Those who act under these grants are not at liberty to transcend the imposed limits because they believe more or different power is necessary.

I urge the committee to heed these words, Mr. Chairman. Look not at extraordinary conditions which have existed in the past few weeks, but look to the Constitution.

(The complete prepared statement of Senator Stennis follows):

STATEMENT OF SENATOR JOHN STENNIS BEFORE SENATE JUDICIARY COMMITTEE ON
S. 1564, THE VOTING RIGHTS ACT OF 1965

Mr. Chairman, under our system of government there is an absolute condition precedent to the enactment of all legislation by the Congress. There must be

a constitutional grant of authority to the Congress, either express or necessarily implied, for the passage of the legislation. The most compelling problem may not be the subject of Federal law in the absence of constitutional authority.

I yield to no one in my belief that all citizens who are qualified under the law, whatever legal requirements may be established thereby, should be allowed to register and vote without any discrimination of any kind. I have always supported this position and I do so now. The existence of a problem, even assuming such a problem exists, does not provide the constitutional authority for Congress to legislate; that authority must be found within the four corners of our basic law, the Constitution of the United States.

The Supreme Court has expressed this principle on many occasions and has never upheld the validity of an act of Congress simply because it sought to accomplish a desired result. In the famous case of *Carter v. Carter Coal Co. et al.* (298 U.S. 238, 56 S. Ct. 855, 80 L. Ed. 1160 (1936)), for example, the Court spoke of its duty to determine the constitutionality of legislation and stated:

"In the discharge of that duty, the opinion of the lawmakers that a statute passed by them is valid must be given great weight, but their opinion, or the court's opinion, that the statute will prove greatly or generally beneficial is wholly irrelevant to the inquiry" (298 U.S. 238, 297).

And in *Linder v. United States* (268 U.S. 5 (1924)), the Court clearly stated that "Federal power is delegated, and its prescribed limits must not be transcended even though the end seem desirable" (268 U.S. 5, 22).

It is true, of course, that within constitutional bounds the Congress is free to enact any legislation which is reasonably adapted to meeting a problem. Attorney General Katzenbach, in his testimony to the House and Senate Judiciary Committees on S. 1564, gave great weight to the fact that the means chosen by Congress to accomplish a desired result are solely a matter of legislative discretion. This is certainly true, but it is valid only to the point that Congress does not exceed the grant of its constitutional authority. In declaring unconstitutional the Railroad Retirement Act of 1934, the Supreme Court very concisely stated:

"The fact that the compulsory scheme is novel is, of course, no evidence of unconstitutionality. Even should we consider the act unwise and prejudicial to both public and private interest, if it be fairly within delegated power our obligation is to sustain it. On the other hand, though we should think the measure embodies a valuable social plan and be in entire sympathy with its purpose and intended results, if the provisions go beyond the boundaries of constitutional power we must so declare" (*Railroad Retirement Board et. al. v. Alton Railroad Co. et al.*, 296 U.S. 380, 390 (1935)).

So it is very clear, Mr. Chairman, that the purpose of legislation, no matter how desirable or necessary, does not alone justify congressional action. Concurrent with that purpose there must be constitutional authority. In my opinion, S. 1564 does not meet this test. I believe it can be clearly demonstrated that his bill not only exceeds the authority of Congress but that it is directly contrary to many principles of our system of government. Specifically, I will devote my statement to these points:

1. The power to regulate elections and establish qualifications and procedures to vote is solely within the power of the respective States, subject only to Article I, section 4; the 15th amendment, and the 19th amendment to the Constitution.

2. S. 1564 far exceeds the delegated power of Congress as conferred by Article I, section 4, and the 15th and 19th amendments.

3. S. 1564 violates the spirit, if not the letter, of the following constitutional principles:

- (a) the prohibition against ex post facto laws and bills of attainder;
- (b) the separation of powers doctrine;
- (c) the right of judicial review; and
- (d) the principle that ours is a government of laws and not of men.

It is axiomatic that the Federal Government has only those powers delegated to it by the Constitution. Absent an express or implied grant of authority, there is no Federal power. On the contrary, the respective States are the repositories of residual power; that is, authority not given to the Federal Government, nor denied to the States, remains in the States or in the people without enumeration in the Constitution. The 10th amendment forever set this proposition at rest. Further, the doctrine was given clear enunciation in *Carter v. Carter Coal Co., et al.*, supra, wherein the Court said:

"The general rule with regard to the respective powers of the Constitution is not in doubt. The States were before the Constitution; and, consequently, their legislative powers antedated the Constitution. Those who framed and those who

adopted that instrument meant to carve from the general mass of legislative powers, then possessed by the States, only such portions as it was thought wise to confer upon the Federal Government; and in order that there should be no uncertainty in respect of what was taken and what was left, the national powers of legislation were not aggregated but enumerated—with the result that what was not embraced by the enumeration remained vested in the States without change or impairment." (298 U.S. 238, 294).

Applying this principle to the question of voting, it is clear beyond doubt that only the respective States have the authority to establish the qualifications of voters.

Article I, section 2 of the Constitution provides:

"The House of Representatives shall be composed of Members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature."

The 17th amendment likewise states:

"The Senate of the United States shall be composed of two Senators from each State, selected by the people thereof, for 6 years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature."

These two provisions of the Constitution expressly provide that those who vote for Members of the House and Senate shall have the same qualifications as are required of electors of the most numerous branch of the State legislature. Without question, these provisions give to the States the authority to set the qualifications for electors. In addition, with reference to the election of the President and Vice President, article II, section 1, clause 2 provides:

"Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; * * *"

There can be no argument that these three sections of the Constitution expressly and specifically grant to the States the authority to determine the qualifications of electors in all Federal elections. The only other provision dealing with Federal elections is article I, section 4, which provides that the Congress may regulate the "times, places, and manner of holding elections for Senators and Representatives." It has never been seriously contended, however, that this section gives Congress the power to establish qualifications. Alexander Hamilton, in speaking of this provision, states in No. 60 of "The Federalist Papers":

"The truth is, that there is no method of securing to the rich the preference apprehended, but by prescribing qualifications of property either for those who may elect or be elected. But this forms no part of the power to be conferred upon the National Government. Its authority would be expressly restricted to the times, the places, and the manner of elections. The qualifications of the persons who may choose, or be chosen, as has been remarked upon other occasions, are defined and fixed in the Constitution, and are unalterable by the (National) Legislature."

The Supreme Court has also supported this interpretation of the power of Congress to regulate the times, places and manner of conducting congressional elections. For example, in *Newberry v. United States*, 250 U.S. 232 (1920), the Court stated:

"Many things are prerequisites to elections or may affect their outcome: voters, education, means of transportation, health, public discussion, immigration, private animosities, even the face and figure of the candidate; but authority to regulate the manner of holding them gives no right to control any of these." (256 U.S. 232, 237.)

See also *Ex parte Yarbrough*, 110 U.S. 651 (1883).

It is also established without question that these sections are the only provisions of the Constitution dealing with the authority to determine the qualifications of voters, subject only to the 15th and 19th amendments. The 19th amendment, of course, prohibits discrimination on the basis of sex and is not relevant to this discussion. It is just as clear that under these provisions and the Supreme Court's interpretation thereof the several States have the exclusive power, subject only to the prohibition of the 15th amendment, to decide who shall vote in both Federal and State elections and to set the qualifications which must be met. The Supreme Court has affirmed and reaffirmed this principle in many decisions. In *Pope v. Williams*, 193 U.S. 621 (1904) for example, the Court stated: "The Federal Constitution does not confer the right of suffrage

upon anyone, and the conditions under which that right is to be exercised are matters for the States alone to prescribe * * * (193 U.S. 621, 638).

The Court has likewise specifically ruled that requiring all voter applicants to pass a literacy test is a legitimate and permitted exercise of the States authority to set voting qualifications. In *Guinn v. United States*, 238 U.S. 347 (1915) the Court dismissed any question on this subject by stating:

"No time need be spent on the question of the validity of the literacy test considered alone since as we have seen its establishment was but the exercise by the State of a lawful power vested in it not subject to our supervision and, indeed, its validity is admitted." (238 U.S. 347, 366.)

This doctrine was specifically upheld by the Supreme Court as recently as 1959 in *Lassiter v. Northampton Election Board*, 360 U.S. 45 (1959) involving a literacy test in the State of North Carolina. In a unanimous decision the Court held:

"The present requirement, applicable to members of all races, is that the prospective voter 'be able to read and write any section of the constitution of North Carolina in the English language.' That seems to us to be one fair way of determining whether a person is literate, not a calculated scheme to lay springs for the citizen. Certainly we cannot condemn it on its face as a device unrelated to the desire of North Carolina to raise the standards for people of all races who cast the ballot" (360 U.S. 45, 63).

Further, the Attorney General of the United States, while testifying to the Senate Judiciary Committee on July 24, 1963, during consideration of the then pending civil rights bill, stated: "I think there is no question that it is in the power of the States to establish the qualifications of its voters and the State does have the authority to establish a literacy test." At another point in his testimony the Attorney General also stated that "I don't believe that the Federal Government can establish the qualifications for voting * * *." And, indeed, the present Attorney General affirmed these principles in testifying before the Senate Judiciary Committee on the bill now under consideration.

Based on these constitutional provisions, decisions of the Supreme Court, and the opinions of the present Attorney General and his immediate predecessor, I believe all members of this committee will agree that the several States have the exclusive jurisdiction to determine voter qualifications, specifically including the right to establish literacy tests. This being true, let us now turn to a consideration of the only restriction on that authority, the 15th amendment to the Constitution.

Soon after the passage of the 13th, 14th and 15th amendments, Congress enacted a number of enforcing statutes. Likewise, the Supreme Court was quickly called upon to interpret these new constitutional protections, and from the date of its first decision in *The Slaughter-House cases* in 1873 (*The Butchers' Benevolent Association of New Orleans v. The Crescent City Livestock Landing and Slaughter-House Company*, 83 U.S. 36) to the present time, the Court has without exception held that: (1) the 14th and 15th amendments prohibit action of the States, but not of individuals, which deny the rights secured thereby; and (2) the legislative power of Congress thereunder is limited to "appropriate legislation" designed only to prohibit violations thereof based on race or color. Any act of Congress which exceeds these specific limitations is invalid.

The 15th amendment, of course, provides that the right of citizens to vote shall not be denied "on account of race, color or previous condition of servitude." This guarantee does not enlarge the power of the Federal Government nor does it diminish the power of the States except to the extent that it prohibits voting discrimination because of race. As the Court so clearly stated in *Pope v. Williams*, supra:

"Since the 15th amendment has whole control over suffrage and the power to regulate its exercise is still left with and retained by the several States, with the single restriction that they must not deny or abridge it on account of race, color, or previous condition of servitude" (193 U.S. 621, 632).

Similarly, the 15th amendment does not create any new right on the part of anyone to vote, except that a person can no longer be denied the right to vote because of his race or color. All persons are still subject to such nondiscriminatory requirements as the several States may desire to establish. See, for example, *United States v. Reese*, 92 U.S. 214 (1875), which held that "The 15th amendment does not confer the right of suffrage upon anyone." (92 U.S. 214, 217). Only the States, and not the Federal Government, have the authority to determine what those requirements will be. And, indeed, this discretion on the

part of the States is not subject to Federal review; the Court so held in *Pope v. Williams*, supra, wherein it was stated that "The question whether the conditions prescribed by the State might be regarded by others as reasonable or unreasonable is not a Federal one." (193 U.S. 621, 633). The only limitation on this power of the States is that no one may be denied the privilege of voting simply because of race or color.

Section 2 of the 15th amendment gives to the Congress power to enforce the prohibition of that amendment by "appropriate legislation." In *United States v. Reese*, supra, the Supreme Court clearly spelled out in unmistakable language that such legislation must be restricted to limiting denials based on race or color. That case arose as the result of the act of Congress of May 31, 1870 (16 Stat. 140), which was designed to enforce the 15th amendment guarantee. The first and second section of that act, respectively, provided that all persons shall have the right to vote without distinction as to race, color or previous condition of servitude, and established punishment for any officer who failed to give all persons the opportunity to vote without regard to race or color. Section 3, however, provided that the offer of any person to perform any act necessary to qualifying to register, and the subsequent act of an officer in refusing to receive or permit such performance, shall be considered performance of the act. Section 4 provided punishment for any person who wrongfully attempted to prevent any person from doing an act necessary to be done to qualify to vote. Neither section 3 nor section 4 was in any way limited to prohibiting denials of the right to vote because of race or color.

The Court prefaced its consideration of whether these two sections constituted "appropriate legislation" by stating:

"It is not to be contended, nor can it be, that the amendment confers authority to impose penalties for every wrongful refusal to receive the vote of a qualified elector at State elections. It is only when the wrongful refusal at such an election is because of race, color or previous condition of servitude, that Congress can interfere, and provide for its punishment. If, therefore, the third and fourth sections of the act are beyond that limit, they are unauthorized." (92 U.S. 214, 218).

The Court then examined the act of 1870 and found that sections 3 and 4 were not expressly limited to prohibiting discrimination based on race or color, and it further found that those sections were not limited by the first and second sections. The Court therefore declared the act of 1870 unconstitutional. In *United States v. Harris*, 106 U.S. 629 (1882) the Court stated, with reference to the *Reese* case, that:

"The ground of the decision was that the sections referred to (sections 3 and 4) were broad enough not only to punish those who hindered and delayed the enfranchised colored citizen from voting on account of his race, color or previous condition of servitude, but also those who hindered or delayed the free white citizen." (106 U.S. 629, 642).

Now, Mr. Chairman, let me turn to a consideration of the provisions of S. 1564 and see if they can be reconciled with these constitutional principles. First of all, it should be noted that the authors of this proposal do not pretend to base it on any provisions of the Constitution except the 15th amendment. It is entitled a bill "To enforce the 15th amendment to the Constitution of the United States." In addition, the Attorney General stated in his testimony before the House Judiciary Committee, as shown on page 81 of the preliminary transcript, that "As drafted this is based entirely on the legislative provisions of the 15th amendment * * *". So I assume that no other constitutional basis can be advanced for this bill. Clearly, however, the bill far exceeds the authority granted Congress by the 15th amendment.

Section 2 of S. 1564 simply declares that no voting qualifications or procedure shall be used to deny the right to vote on account of race or color. This neither adds to nor detracts from the coverage of the bill. Section 3(a) provides, however, that no person, and I repeat for emphasis, no person shall be denied the right to vote in any election because of his failure to comply with any test or device in any State or political subdivision, in use on November 1, 1964, if less than 50 percent of the persons of voting age in that State or political subdivision were registered to vote on November 1, 1964, or if less than 50 percent of such persons actually voted in the presidential election of November 1964. This section contains no express limitation which restricts its operation to enforcement of the 15th amendment prohibition against denials of the right to vote because of race or color. It can not be contended that it is so limited. In this respect, it is similar to section 3 of the act of 1870 which the Supreme Court interpreted in the *Reese* case.

We must look further, therefore, to determine if section 3(a) is limited by any other provision in the bill. Certainly it is not limited by section 2, which merely states a truism that no person shall be denied the right to vote on account of race or color. I submit that there is no other possible restriction on this provision; if this is true, S. 1564 can not be considered "appropriate legislation" under the 15th amendment.

It has been contended by the Attorney General, of course, that the effect of section 3(a) is limited by the provisions of section 3(c) which provides that a State or political subdivision which is subject to 3(a) may file a petition for a declaratory judgment in a three-judge district court in the District of Columbia. If that court finds that neither the petitioner nor any other person acting under color of law "has engaged during the 10 years preceding the filing of action in acts or practices denying or abridging the right to vote for reasons of race or color" the court shall then declare that the State or subdivision involved is not subject to the terms of section 3(a). At first glance it may seem that this section limits 3(a) to prohibiting denials based on race or color; a closer examination reveals that 3(a) is not so limited. Suppose, for example, that the State of South Carolina, which comes within the terms of section 3(a), files a petition for a declaratory judgment. After trial, it is determined by the court that a Negro citizen of South Carolina was wrongfully denied the right to vote 6 years prior to the filing of the petition. Under the terms of 3(a), South Carolina would not be entitled to a declaratory judgment removing it from the operation of section 3(a). Thereafter, for a period of 4 years, the State of South Carolina would be prohibited from applying to anyone, not just a Negro citizen, but anyone an otherwise constitutionally valid literacy test. Not only would the State, or any political subdivision thereof, be prevented from discriminating against Negroes, neither could it fairly and constitutionally apply a literacy test to any citizen, Negro or white.

There can be no question, Mr. Chairman, and gentlemen, that the effect of this provision is to apply to cases other than that of denying voting privileges on account of race or color. This provision of the bill would not prevent the nondiscriminatory use of literacy tests, it would simply prevent their use at all. The power to do this is not given to Congress by the 15th amendment or any other provision of the Constitution.

The Attorney General, knowingly or unknowingly, admitted in his testimony to the House Judiciary Committee that the operation of section 3 is not limited to enforcing the protections of the 15th amendment. For example, he was asked a hypothetical question which set up a condition of obvious discrimination but one which was not within the 50-percent provision of section 3(a). When asked to give people relief in such situations, the Attorney General replied:

"The reason that it is out (meaning the hypothetical situation) is that it does not fit the 50-percent figure. The reason we have not broken things down into whites and Negroes, which might be a preferable way of doing it, is that unlike the hypothetical case that you put, Congressman, we don't have those figures. I can't tell you and you can't tell me how many Negroes voted in Florida in 1904."

This is an unequivocal admission that the formula set up in section 3(a) is not all related to denials of the right to vote on account of race. Indeed, the statistics necessary for such a formula are not even available.

Again, on page 84 of the preliminary transcript, the following series of questions appears:

"Mr. LINDSAY. Now, to start a proceeding under section 3, I take it that you, as Attorney General, would have to start a proceeding, somebody would have to do something to begin the administration of this bill.

"The ATTORNEY GENERAL. Yes.

"Mr. LINDSAY. Now, I would take it that under section 3, you, as Attorney General, would have to make a finding, unilateral, that there had been a 15th amendment violation; is that not true?

"The ATTORNEY GENERAL. Not a 15th amendment violation; no. Merely a finding that there were literacy tests and these statistics applied."

I am confident, Mr. Chairman, that the Attorney General would rephrase these replies if he had the opportunity to do so. But the fact remains, that he truthfully and accurately stated how and why this bill was drawn as it was. It was not drafted in such a way as to be limited to enforcing the 15th amendment. The Attorney General even admitted that he could place section 3 in operation

and effect without a finding that there had been a violation of the 15th amendment. He stated under oath, as the highest legal officer in this Nation, that a State could be denied its constitutional rights because of the concurrence of two conditions; one, that it prescribes a literacy test as a prerequisite to voting, which the Supreme Court has without exception declared a valid exercise of State power; and, two, the application of an arbitrary statistical finding that fewer than 50 percent of the voting age residents of that State voted in the presidential election of 1964, when, admittedly, such a statistic has no rational relationship to 15th amendment violations.

It cannot be questioned, Mr. Chairman, that section 3 applies to cases other than those of denials on account of race or color. As such, it exceeds the authority granted to Congress by the section 2 of the 15th amendment and is invalid. It does not matter that it may have the effect of prohibiting such denials; if it exceeds that authority it is invalid. To hold otherwise would mean that Congress could enact any legislation it desired as long as it incidentally prohibited discrimination based on race or color.

I submit, Mr. Chairman, that section 3 of this bill, in addition to exceeding the authority of Congress under the 15th amendment, is not reasonably adapted to accomplishing the desired result. The stated purpose of the bill is to prohibit the nondiscriminatory use of literacy tests and other devices which it is claimed have been utilized to deny suffrage rights of Negroes. But this bill does not purport to prevent the discriminatory use of such tests; it simply would prohibit the use of such tests at all in certain States. Under the unanimous decisions of the Supreme Court, the several States have a constitutional right to prescribe such tests. Congress cannot abolish by statute that which the States have a constitutional right to do. All Congress can do under the 15th amendment is enact legislation to prevent the discriminatory use of these tests, and it seems evident that the provisions of S. 1564 are no reasonably and appropriately limited to that end.

It should be pointed out, of course, that while literacy tests would be abolished in the seven affected States, all other States may continue requiring the passage of such tests as a prerequisite to vote. New York, for example, may continue to disfranchise thousands of native Puerto Ricans. This effect of the bill is in itself highly discriminatory and unfair.

Not only does this bill exceed the authority of Congress under the 15th amendment, but it also contains provisions which are directly contrary to many principles of our system of Government. It clearly violates the spirit, if not the letter of our Constitution.

One of the distinguishing features of English jurisprudence is that a person is presumed innocent until proven guilty. The burden of proof is on the prosecuting authorities, who must prove their case. This bill, however, reverses that procedure and requires proof of innocence on the part of those States which are automatically subject to the terms of section 3(a). On the basis of the arbitrary standards used in that section, the States of Louisiana, Mississippi, Alabama, Georgia, South Carolina, Virginia, Alaska, and parts of North Carolina, Arizona, Idaho, and Maine are proclaimed to be guilty of massive discrimination. Immediately upon enactment of this measure into law, these States would have to prove their innocence or be denied rights which are granted and reserved unto them by the Constitution. In this respect, S. 1564 is nothing less than a bill of attainder because it adjudges guilt by legislative fiat without proof of any evidence.

Section 3(a) of this bill also constitutes a measure in the nature of an ex post facto law, because it arbitrarily applies on the basis of a condition which existed in November 1964. In addition, section 3(c) would prohibit a State from proving that it is not now guilty of violating the 15th amendment unless it can prove that there has not been one single incident of voting discrimination during the past 10 years. In other words, if an election official in Georgia wrongfully denied someone the right to vote 8 years ago, the entire State would be subject to the provisions of this bill. It would not matter that the State could prove beyond question that it now has no discriminatory laws or that no one was being denied the right to vote in violation of the 15th amendment, it would still be adjudged guilty on the basis of an act which occurred 8 years ago and it would be subjected to new and different penalties from those imposed at the time of the commission of the wrongful act. This clearly embodies the concept of an ex post facto law, for as the Court stated in *Comings v. Missouri*, 71 U.S. 277 (1867):

"By an ex post facto law it means one which imposes a punishment for an act which is not punishable at the time it was committed; or imposes additional punishment to that then prescribed; or changes the rules of evidence by which less or different testimony is sufficient to convince than was then required." (71 U.S. 277, 325-26).

Surely no one can deny that S. 1564 fits this description.

I realize, Mr. Chairman, that the constitutional prohibition contained in article I, section 9 against bills of attainder and ex post facto laws applies only to penal statutes. In a technical sense, therefore, this bill is not subject to attack as a bill of attainder or an ex post facto law. However, there can be no question that S. 1564 violates the spirit of this constitutional protection. I do not believe the Congress can expect other legislative bodies to honor the letter and spirit of our constitutional principles if Federal legislation is adopted which so flagrantly flies in the face of basic constitutional protections.

After the purely administrative determinations have been made by the Attorney General and the Director of the Census as directed by section 3(a), section 4 provides for the appointment of voting examiners by the Civil Service Commission. Subsection (a) thereof simply provides that whenever the Attorney General certifies that he has received complaints from 20 or more residents of an affected political subdivision alleging that they have been denied the right to vote on the basis of race or color, or that in his judgment the appointment of examiners is "otherwise necessary," the Civil Service Commission shall appoint as many examiners as it may deem appropriate in that political subdivision. Subsection (b) provides that the determination or certification of the Attorney General or the Director of the Census under section 3 or 4 "shall be final and effective upon publication in the Federal Register." This means, Mr. Chairman, that the decision of these two officials is not subject to any question, appeal or judicial review of any kind whatever. Once it has been determined by the Attorney General, in his sole discretion, that the appointment of examiners is necessary, no one can question that determination. Thus, it would be possible for the Attorney General, without any appeal from his decision, to disrupt the entire registration process in a State which has been determined subject to section 3(a).

Just what do sections 3 and 4 mean, Mr. Chairman? First of all, the former establishes guilt of massive discrimination on the basis of what clearly seems to me an arbitrary statistical finding. No proof of violating the 15th amendment is required; indeed, section 3(c) prohibits a State from proving it is not guilty of present discrimination if it can be shown that it discriminated in the past—as long as 10 years in the past. Once these determinations have been made, section 4 then empowers one man, the Attorney General of the United States, to require the appointment of Federal examiners to completely take over the function of registering substantial numbers of residents. This action of the Attorney General is not reviewable and no one can question his judgment that the appointment of examiners is necessary.

Of course, it has been stated many times that all a State need do to avoid these harsh consequences is to come into court and prove that it is not discriminating. But, according to the testimony of the Attorney General himself, the States of Mississippi, Louisiana, and Alabama are precluded from doing this for almost 10 years, and the State of Georgia cannot come into court for approximately 5 years. Nor is it any salvation for this bill's constitutionality for the Attorney General to say that the discretion granted to him will not be abused, for as Chief Justice Marshall so clearly stated " * * * the constitutionality of a measure depends, not on the degree of its exercise, but on its principle." (*The Providence Bank v. Billings et al.*, 29 U.S. 514 (1830).) This bill substitutes the rule of man for the rule of law, and this is foreign to our concepts of justice and jurisprudence.

Time does not allow me to discuss all of the unconstitutional provisions of this bill, but there are three more sections which demand consideration. Section 5(e), for example, provides that "No person shall be denied the right to vote for failure to pay a poll tax if he tenders payment of such tax for the current year to an examiner, whether or not such tender would be timely or adequate under State law." Although the Congress deemed it necessary to amend the Constitution to prohibit poll tax requirements, this bill attempts to do that very thing. If mere legislation cannot make the payment of current poll taxes illegal, neither can mere legislation abolish the requirement that such taxes be paid for past years. It is only a fiction to contend otherwise. In addition to

this, the Attorney General has admitted that he cannot prove that the poll tax requirement has been used to discriminate in violation of the 15th amendment. In his testimony before the House Judiciary Committee, he stated that H.R. 8400, the companion bill to S. 1584, "is based on the 15th amendment and to eliminate poll taxes on the basis they have been used to discriminate, I think would be a difficult case constitutionally to prove and establish." He further stated that a poll tax requirement, as a matter of law, does not violate the 15th amendment. So he admitted that he cannot prove the discriminatory use of poll taxes and he admitted the legality of such a requirement. Now, then, can it be contended that Congress can legislate on the subject in a bill which is entirely based on the 15th amendment? The simple answer is that Congress cannot enact such legislation based on the 15th amendment.

In addition to the legal objections to section 5(e), a hypothetical case demonstrates that it is, in fact, discriminatory itself. Mississippi requires the payment of poll tax for 2 consecutive years as a condition to vote. That is, a voter must have a receipt for the current year in which he votes as well as a receipt for the immediately preceding year. Suppose that citizen A, a Negro resident of the State, is eligible for listing by a Federal examiner under the provisions of this bill. He has not paid the poll tax in previous years but pays the current year's tax, even though it may be after the date prescribed by State law, and he is declared eligible to vote. Citizen B, however, has not been denied the right to vote on the basis of race or color, and he is qualified to vote in every way except that he failed to pay the required poll tax for the immediately preceding year. Citizen B is not allowed to vote. Thus, it is easily seen that this bill creates discrimination, the very thing it is designed to eliminate.

One of the provisions of the bill that is most destructive of constitutional principles is found in section 8. Under the terms of that section, no State or political subdivision which is subject to section 3(a) may "enact any law or ordinance imposing qualifications or procedures for voting different than those in force and effect on November 1, 1964 * * *" without securing a declaratory judgment in the District Court for the District of Columbia that such qualifications or procedures will not have the effect of denying or abridging rights guaranteed by the 15th amendment. Purely and simply, Mr. Chairman, this section would give to the Federal judiciary power to veto legislative acts of a State. This is not a judicial function, it is an executive function to be exercised solely by the Governor under the terms of State law.

The Federal Government does not have State legislative powers or executive powers, but this bill attempts to create same by making the court in the District of Columbia the final arbiter of any legislation enacted by the affected States dealing with voting qualifications or procedures. This constitutes a flagrant violation of the separation-of-powers doctrine.

Finally, attention must be given to section 10(b), which provides:

"No court other than the District Court for the District of Columbia shall have jurisdiction to issue any declaratory judgment or any restraining order of temporary or permanent injunction against the execution or enforcement of any provision of this act or any action of any Federal officer or employee pursuant hereto."

This provision is nothing less than an attack on our entire judicial system, Mr. Chairman, for it proclaims that no court in this Nation, Federal or State, is competent to determine controversies which will arise under this bill except the District Court in the District of Columbia. No longer will a man be entitled to a trial before a judge and jury of his peers. No longer may anyone be justified in placing confidence in the courts of this land, because the Congress will have announced that these tribunals cannot be trusted to hear and determine controversies and render fair and impartial decisions.

The enactment of section 10 would not only undermine our system but as now written it would deny to those States subject to section 3 the right of compulsory process of witnesses. Rule 4(e) (1) of the "Rules of Civil Procedure," title 28 of the United States Code, provides for the issuance of subpoenas, by the clerk of the district court for the district in which a trial or hearing is to be held, to compel attendance. That rule further provides, however, that:

"A subpoena requiring the attendance of a witness at a hearing or trial may be served at any place within the district or at any place without the district that is within 100 miles of the place of the hearing or trial specified in the subpoena; and, when a statute of the United States provides therefor, the court upon application

and cause shown may authorize the service of a subpoena at any other place." [Emphasis added.]

Under this rule and the terms of section 10, no State which is subject to section 3(a), with the exception of the State of Virginia, could compel the attendance of any witness at any proceeding under this bill. And even if the bill is amended to authorize the service of process outside a radius of 100 miles of the District of Columbia, the court would still have discretionary authority to issue or refuse to issue a subpoena. It is therefore clear that a State, which has already been adjudged guilty, would not have the right to compel the presence of a witness in any action under section 3(c) or any other provision of this bill.

I am aware, Mr. Chairman, the fifth amendment guarantees that an accused shall have the right "to have compulsory process for obtaining witnesses in his favor." * * * applies only to criminal prosecutions. But this bill certainly provides punishments which are penal in nature—at the very least, S. 1564 imposes extremely harsh conditions on the States affected and takes from them constitutional rights. Under such circumstances, every possible protection should be afforded to enable these States to prove their innocence. But, again, this bill violates the spirit of a basic guarantee of our constitutional system of government.

I have shown, I believe as clear as crystal, that the sole power of prescribing voter qualifications rests exclusively with the States. During our entire history, the legislative, the executive, and the judicial branches of our Government have all recognized this absolute rule without a single exception. It was reaffirmed by the Congress and by the States in 1963-64 in the proposal by the Congress and the adoption by the States of the anti-poll-tax amendment. It was expressly recognized by the judicial branch of the Government in the well-known *Lassiter* case decided in 1959.

We have shown, clearly I think, that this bill sets aside and holds for naught certain valid qualifications for electors under State law. Such provisions therefore are made inapplicable.

To meet the void created by this usurpation of power in declaring these certain State requirements inapplicable, this bill goes into another unauthorized field and attempts to set up what is, in effect, a new set of requirements.

Section 5(b) of the bill provides: "Any person whom the examiner finds to have the qualifications prescribed by State law in accordance with instructions received under section 6(b) shall promptly be placed on a list of eligible voters."

Section 6(b) provides: "The times, places and procedures for application and listing pursuant to this Act and removals from the eligibility lists shall be prescribed by regulations promulgated by the Civil Service Commission and the Commission shall, after consultation with the Attorney General, instruct examiners concerning the qualifications required for listing."

These sections, when taken together, attempt to prescribe the general machinery for a "Federal formula" for voter qualifications. This is done by the Congress without the slightest constitutional authority.

The bill does not prescribe a definite qualification formula to be uniformly applied. It goes much further and provides: "and the Commission [Civil Service] shall, after consultation with the Attorney General, instruct examiners concerning the qualifications required for listing." This clearly gives the Civil Service Commission the authority to "pick and choose" among the qualifications prescribed by various States.

The Civil Service Commissioners are thus given the authority to select, and the examiners shall apply such qualifications among the State laws as they may wish to have applied in any respective State. There are no guidelines established whatsoever except the items which are outlawed by this bill and the statement by the Attorney General that these qualifications shall include residence, age, and citizenship.

These provisions are clearly invalid for two reasons. First, the Congress is entirely without the authority to enact such a plan. Second, the plan is vague, indefinite, and uncertain.

Mr. Chairman, in plain and simple language, I can only conclude that this is a bad bill. It proposes that which is far beyond the power of Congress to enact under the 15th amendment. It violates many principles of our system of jurisprudence, and it would deny to certain States their constitutional rights under the guise of protecting other rights. Evidence abounds that it was drawn in haste and under extreme emotional pressure; even some of its sponsors admit that it includes some provisions, or excludes others, contrary to their original understanding. It adjudges some areas of our Nation guilty, without trial or

any judicial determination, on the basis of an arbitrary statistical finding which has no relation whatever to the enforcement of the 15th amendment.

The Attorney General even acknowledged that it would take effect in these areas without the finding of one single violation of the 15th amendment protection. Congress simply has not authority to legislate under such terms.

Still we are told that we must enact this bill, swiftly and without change, because there is a great need for new voting legislation. But need is not the test of constitutionality, and great social, economic, or political crises do not provide legislative authority not granted by the Constitution. I am reminded of the great wisdom of the Supreme Court when it stated in *A. L. A. Schechter Poultry Corp. et al. v. United States*, 295 U.S. 495, 55 S. Ct. 847, 79 L. Ed. 1570 (1935), that:

"Extraordinary conditions may call for extraordinary remedies. But the argument necessarily stops short of an attempt to justify action which lies outside the sphere of constitutional authority. Extraordinary conditions do not create or enlarge constitutional power. The Constitution established a national government with powers deemed to be adequate, as they have proved to be both in war and peace, but these powers of the National Government are limited by the constitutional grants. Those who act under these grants are not at liberty to transcend the imposed limits because they believe more or different power is necessary."

I urge the committee to heed these words, Mr. Chairman. Look not at extraordinary conditions which have existed in the past few weeks, but look to the Constitution.

Senator STENNIS. As I said in the beginning, I think that the passage of this bill would leave the Constitution of the United States in a shambles and that is the greatest tragedy of all—the greatest tragedy of all. Those voting matters will be adjusted in some way. This problem will pass in some way. But if we tear down, if we just disrupt and open up the Constitution of the United States to the pressure of the moment when people march and sing and lie down in the corridors of the White House and all these things that go with it, we will open up the precedent here for changing, suspending, even, the Constitution of the United States because of these things. Then our Constitution is gone. We will have some kind of a government, but we shall not have a constitutional government and we shall not have one that the people have a right to pass on the amendments to it. We will not have one where a calm, deliberative Congress will have a chance to evolve, evolve the legislation that is necessary. As I say, that is the greatest problem presented by this whole matter in this provision.

Senator ERVIN. I want to ask a question and for this purpose I want to ask that section 8 of page 8 of the bill be copied here in its entirety. It reads as follows:

Whenever a State or political subdivision for which determinations are in effect under section 3(a) shall enact any law or ordinance imposing qualifications or procedures for voting different than those in force and effect on November 1, 1964, such law or ordinance shall not be enforced unless and until it shall have been finally adjudicated by an action for declaratory judgment brought against the United States in the District Court for the District of Columbia that such qualifications or procedures will not have the effect of denying or abridging rights guaranteed by the 15th amendment. All actions hereunder shall be heard by a three-judge court and there shall be a right of direct appeal to the Supreme Court.

Now the Legislature of North Carolina has certain laws which are designed to allow the voting in Presidential election by these people who have moved into North Carolina and become permanent residents too late to qualify under our general voting laws to vote in elections,

and other bills which are designed to provide for uniform administration of our election laws throughout the State.

I shall ask you if those bills should be enacted into law, they could not become effective under section 8 until the State of North Carolina came up here, hat in hand, and begged the District Court of the United States to judge that they are constitutional?

Senator STENNIS. Yes, sir, the Senator is correct; it is cut off.

Senator ERVIN. Now, is it not a fundamental principle that the Federal courts will not provide advisory opinions?

Senator STENNIS. That is correct. That is part of our system.

Senator ERVIN. And is it not a fundamental principle in all Federal courts that in order for them to entertain a suit testing the constitutionality of an act, there must be an application of that act to some person?

Senator STENNIS. Yes, the Senator is correct.

Senator ERVIN. So this section 8 does not only suspend the legislative power of the State, but also lays down a condition under which Federal courts will not ordinarily entertain a case at all, because it provides that you cannot apply the act to anybody until the court judges it constitutional and the courts hold that they will not consider the constitutionality of the act until it is applied or threatened to be applied to somebody.

Senator STENNIS. It is a complete reversal of our judicial system and should be held that it violates the due process of law as to States as well as individuals.

Senator ERVIN. That is a very good expression, reversal. Prof. Robert G. Dixon, professor of constitutional law at George Washington University, said this about this provision in his interview by the Congressional Quarterly:

The prior approval provision seems to stand our conventional system of judicial review on its head, albeit for a worthy end.

Senator Stennis, you have spent the major energies of your life in the study of law and the administration of justice, both as a trial lawyer and as a trial judge, have you not?

Senator STENNIS. I have spent some of it, yes.

Senator ERVIN. I will ask you if you share my opinion that if this bill is passed in anything like its present form and is sustained as constitutional by the Federal courts, would it not mean to you that the Constitution of the United States has become a worthless scrap of paper?

Senator STENNIS. It is gone. It would be gone if this is actually sustained. It sets a precedent for anything that anybody might want, a majority of the Congress or any President might want at any given time on any subject.

Senator ERVIN. I would like to ask you if the invalidity of this bill on a number of constitutional grounds is not sustained by multitudes of decisions of the Supreme Court of the United States interpreting the Constitution?

Senator STENNIS. Many of them all the way through the history of the Court. The legislative and the judicial branch, too—I mean the judicial and the legislative branches.

Senator ERVIN. Can you call to mind a single decision of the Supreme Court interpreting the Constitution which is compatible with a single salient feature of this bill?

Senator STENNIS. Not any of the essential features, that is correct. They are contradictory to those principles.

If I may mention one further thing, I said that in this voting rights field, it just leaves the Constitution a shambles and thereby sets a precedent, as you said so well, too. But also this provision here requiring all the provisions to be tested—here is a law that all has to be tested here in this court in the District of Columbia. That is an indictment of our entire judicial system, and ought to be resented by the membership of the judiciary and by the American Bar Association, by the State bar associations, everywhere all the time, regardless of their opinion about the 15th amendment. It is an assault on the whole judicial system and the processes, not just the incumbent judges alone, but the whole system, and a reversal of every concept that we have had of the judicial system.

Senator ERVIN. Do not the provisions of this bill leave open all Federal courts to suits and prosecutions at the hands of the United States and nail shut every Federal court in the United States to the States and political subdivisions of States covered by it except an inferior court of the District of Columbia?

Senator STENNIS. Well, that is exactly what it does. It seems to me like a group of people sitting around a table and everybody made a suggestion and they just put them all in the hopper and then gave language to them. Except I understand that the President suggested that they also put in the qualifications there of 18 years and above was old enough to vote, and someone did veto that one.

Senator ERVIN. Which would have been about as constitutional as many other provisions of this bill.

Senator STENNIS. Totally outside the Constitution, but no more so than the major provisions of this bill.

Senator ERVIN. Has it not always been the proud boast of our system of justice that courts are always open?

Senator STENNIS. Oh, yes, and that has been held uniformly.

Senator ERVIN. And yet this bill would close the door of every courthouse in the United States as far as original jurisdiction is concerned, except the courthouse of the District of Columbia, for the redress of grievances on the parts of the States and the subdivisions of States affected, and then after they got to the District of Columbia, they would have no compulsory process to compel the attendance of witness. And in addition to that, they would be prevented from rebutting the presumption raised against them and would be put under Federal bondage unless they were able to disprove that not a single citizen had been denied the right to vote on account of race and color in any precinct in the State. If they happen to be the States of Alabama, Mississippi, Louisiana, and Texas, where they have already had the decision against them in one case with respect to one man, they would be denied even the right to access to the court of the District of Columbia for at least 10 years, would they not?

Senator STENNIS. That is correct, that is the operation of it.

Senator ERVIN. All I can say is, Oh, justice, what crimes this bill would perpetrate in any name.

Senator STENNIS. The Senator has expressed it well, better than I could.

I thank the chairman. I thank the committee.

The Senator understands the Chair had ruled that my complete written statement will be put in the record to start with.

Senator ERVIN. I would suggest the entire written statement be printed in the record just preceding the witness' testimony.

Senator STENNIS. I thank the chairman.

Senator ERVIN. The next witness is Senator Thurmond of South Carolina.

STATEMENT OF HON. STROM THURMOND, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator THURMOND. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to appear before you and express my views on the bill you have under consideration, S. 1564. I regret the necessity for this appearance and the urgent atmosphere which attends these hearings, but I would be derelict in my duty as a Senator of the United States if I did not take this opportunity to fully inform this committee of my opinion of this measure.

The primary issue involved is the constitutional protection of the privilege of the ballot—a privilege which, I am sure, we all consider dear. More particularly involved is the protection accorded that privilege by the 15th amendment to the Constitution. Since the pending measure is predicated solely upon the 15th amendment, it becomes incumbent upon us to carefully examine the provisions of the amendment. It provides on section I that:

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

The second section of the amendment authorizes Congress "to enforce this article by appropriate legislation."

In my judgment, the pending bill is not appropriate legislation, such as is contemplated by the 2d section of the 15th amendment.

In my judgment, the pending bill is unconstitutional, because it is in direct conflict with other portions of the Constitution.

The pending bill would invalidate, among other things, the literacy tests of 7 States, 34 counties in another State and 1 county each in 3 States, according to the Attorney General's testimony. Literacy tests are one valid method by which a State can judge the qualifications of citizens who offer to vote. At the present time, more than 20 States, obviously including many States outside the South, have some form of a test which could, in more or less degree, be described as a literacy test.

The provisions of the Constitution which authorize a State to require the proof of literacy for voters are clear and unequivocal. Article I, section 2 of the Constitution states:

Electors (for Members of the House of Representatives) in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature.

The 17th amendment, adopted more than 40 years after the 15th amendment, contains language identical to that found in article I,

section 2, of the Constitution. In providing for the direct election of U.S. Senators, the Congress and the people of this country specifically reaffirmed the basic principle that it is the function of the States to establish qualifications for voters.

The pending bill would override both of these provisions of the Constitution and substitute qualifications for voters established by the Federal Government.

I assume that there is no question but that the pending bill would have that effect. However, if there had previously been any doubts, the statement by the Attorney General to this committee has certainly resolved them. On page 10 of his prepared statement, the Attorney General said:

The Commission (speaking of the Civil Service Commission), after consultation with the Attorney General, will instruct examiners as to the qualifications applicants must possess. The principal qualifications will be age, citizenship, and residence, and obviously will not include those suspended by the operation of section 3.

The intervening adoption of the 15th amendment in no way invalidates the specific provisions of article I, section 2 of the Constitution and the 17th amendment. At a very early date, but subsequent to the adoption of the 15th amendment, the Supreme Court held that literacy tests which are drafted so as to apply alike to all applicants for the voting franchise would be deemed to be fair on their face, and in the absence of proof of discriminatory enforcement could not be viewed as denying the equal protection of the laws guaranteed by the 14th amendment. Therefore, it is implicit that neither would they violate the terms of the 15th amendment.

Senator ERVIN. I interrupt you to ask a question which is relevant to what you are discussing.

Senator THURMOND. Yes, sir.

Senator ERVIN. Do you not agree with me in this, that the 15th amendment made no change whatever in any of the provisions of the original Constitution, but on the contrary, all it did was prohibit action by a State which would have been valid in the absence of the amendment?

Senator THURMOND. I thoroughly agree with the able chairman on that point. There has been no decision of the Supreme Court of the United States to the contrary.

Senator ERVIN. Now, the 15th amendment merely prohibits the United States and any State from denying or abridging the right of any qualified citizen to vote on account of his race or color.

Senator THURMOND. That is correct.

Senator ERVIN. And the only authority it gives Congress to legislate is the authority which prevents the United States or the States from violating that provision?

Senator THURMOND. I am in concurrence with the chairman on that point.

Senator ERVIN. And the courts have held in a number of cases, have they not, that the 2d section of the 15th amendment and the concluding section of the 14th amendment do not confer upon the Congress the power to adopt an affirmative code of laws to take care of those things which the amendments assume that the States will do?

Senator THURMOND. In my opinion, the chairman's statement is correct. The 15th amendment did not alter, amend, or change article I, section 2, of the Constitution, which leaves to the States the matter of fixing voter qualifications.

Furthermore, the 15th amendment is self executing, anyway.

Senator ERVIN. And the Supreme Court has held that it does not change the power of the States to fix voter qualifications, including the prescribing of a literacy test in a number of cases, the last of which is the *Lassiter v. Northampton County Board of Elections*, which was handed down in 1959; is that not true?

Senator THURMOND. That is correct. The 15th amendment did not alter any other provision of the Constitution, as the chairman stated. But if it had done so, the 17th amendment, which was adopted 40 years later, came along and repeated verbatim, word for word, article I, section 2 of the Constitution, which would have put it back. Although in my opinion, and I believe in the opinion of the chairman, the 15th amendment did not affect that provision.

Senator ERVIN. In other words, the second section of article I in the 17th amendment makes it as clear as the noonday sun that Congress intended that the States should not only have the power to prescribe the qualifications for voters in State and local elections, but should also have the power to prescribe the qualifications for electors, for Senators, and for Representatives in the House of Representatives.

Senator THURMOND. That is right, because article I, section 2, and the 17th amendment provide that if an elector is qualified to vote for the most numerous branch of the State legislature, which is the house of representatives in a State, he is qualified to vote in a Federal election.

Senator ERVIN. I thank you.

Senator THURMOND. In 1959, Justice Douglas, speaking for the Court in the case of *Lassiter v. Northampton Election Board*, the case the distinguished chairman just referred to—said:

No time need be spent on the question of the validity of the literacy test considered alone since we have seen its establishment was but the exercise by the State of a lawful power vested in it not subject to our supervision, and indeed, its validity is admitted.

This decision upheld the literacy test of the State of North Carolina against a charge of unconstitutionality on its face.

Even as recently as March 1 of this year, 1965, the Court, speaking through Justice Stewart, made the following observation concerning the constitutional rights of the States to prescribe voter qualifications:

There can be no doubt either of the historic function of the States to establish, on a nondiscriminatory basis, and in accordance with the Constitution, other qualifications for the exercise of the franchise. Indeed, the States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised. *Lassiter v. Northampton Election Board*, 360 U.S. 45.

In that case, the Court quoted with approval the following language taken from *Pope v. Williams*, 193 U.S. 621:

In other words, the privilege to vote in a State is within the jurisdiction of the State itself to be exercised as the State may direct, and upon such terms as it may deem proper.

Mr. Chairman, it would be possible to continue giving citations and examples which prove beyond the shadow of doubt that a State has

both the constitutional right and responsibility to specify the qualifications for voters, both in State and Federal elections, including requiring voters to pass literacy tests if such literacy tests are not used as a cloak to discriminate against anyone on the basis of race, color, or previous condition of servitude. However, this should be sufficient authority to convince anyone of the basic constitutional right of the States to require literacy standards for voters. For this reason, I would like to turn now to the bill itself and attempt to point out some of the more obvious defects of the proposal.

The primary object of the bill is to outlaw the use of any "test or device" to determine the qualifications of voters in any State or political subdivision of a State if (1) less than 50 percent of the person of voting age residing in the State were registered on November 1, 1964, or, (2) less than 50 percent of such persons voted in the presidential election of November 1964.

The Attorney General is empowered to determine what standard required by a State will be considered a "test or device" for the purposes of the bill. Section 3(b) of the bill contains broad guidelines for the Attorney General, but it is clear that he is delegated unlimited power to brand any qualification a "test or device" and outlaw its further use. To illustrate, if an applicant is required to sign his name to the application blank, then obviously he is being required to demonstrate his ability to write. The Attorney General, under the terms of this bill, could determine that this is a prohibited test or device. Similarly, the prohibition against requiring an applicant to "demonstrate any educational achievement" forces me to the conclusion that title I, the voting rights section, of the Civil Rights Act of 1964 falls within the prohibition of this bill. As you are aware, that act states that proof of a sixth grade education raises a rebuttable presumption of literacy. This is unquestionably a requirement of educational achievement which would fall within the proscriptions of the pending measure. In this unhappy circumstance, a State registration official would be placed in the inevitable position of violating one Federal law by enforcing another Federal law.

Senator ERVIN. Before you leave that point, this section 3(b) defines the phrase, "test or device," to mean any requirement that a person, as a prerequisite for voting or registration for voting, demonstrate his knowledge of any particular subject. In other words, under that, you cannot even require the person to demonstrate he knows what precinct he is voting in?

Senator THURMOND. That is the way the law can be interpreted.

Senator ERVIN. That is literally what it says, is it not? I quoted it word for word.

Senator THURMOND. That is right.

Mr. Chairman, this bill is predicated upon the assumption that the terms of the 15th amendment have been violated merely by the existence of the fact that less than 50 percent of the voting age residents of a State or political subdivision of a State were registered or voted at the time of the presidential election of 1964. This is a presumption which has no logical or legal connection with the facts. It must be remembered that the 15th amendment prevents the United States or any State from denying or abridging the right of a citizen to vote solely on account of his race, color, or previous condition of servitude. Any appropriate legislation designed to further effectuate the protec-

tion provided by this amendment must be predicated upon the denial of the right to vote for the specific reasons enumerated in the amendment.

The pending bill goes far beyond that. It would allow the registration of individuals who are not qualified to vote under any objective standard, regardless of race or color, in the guise of preventing discrimination solely because of race or color. If the presumption were valid, then the bill would apply and would have to be enforced in all political subdivisions which meet the statistical test. It is evident, however, that the Department of Justice has no intention of applying the terms of this bill to any section of the country outside of the South.

There is no question in my mind but that the premise of the pending bill fails to meet any objective standards which would be necessary to assure its constitutionality. In reality, the bill would not effect and override racial discrimination which exists in areas outside the South. The bill would allow an illiterate to register and vote in the 6 Southern States and 34 counties of the other Southern State covered, but it would not allow the same illiterate to register and vote in any of the other States of the Union which require a literacy standard but do not fall statistically within the purview of this proposal.

Senator ERVIN. I would like to ask one or two questions on what you have just discussed. Is it not held that it is the denial of due process of law to establish by legislative act any presumption or assumption unless there is a rational relationship between the fact established and the ultimate fact?

Senator THURMOND. The Senator is eminently correct.

Senator ERVIN. Does the mere fact that 50 percent of the adult population failed to vote in a particular State or in a particular political subdivision of a State bear any rational relationship to the ultimate fact that people have been denied, that qualified citizens have been denied the right to vote on account of race or color?

Senator THURMOND. None whatsoever that I can see.

Senator ERVIN. Under this bill, a State or a political subdivision could register all the citizens residing within its borders without discrimination and still it would be branded as in violation of the 15th amendment if less than 50 percent of the registered voters went out and voted, would it not?

Senator THURMOND. That is what this bill provides.

Senator ERVIN. Now, the Senator has been active in politics for many years and the Senator knows that people fail to go out to vote for multitudes of reasons, does he not?

Senator THURMOND. That is true.

Senator ERVIN. And the chief reason is apathy or lack of interest in the election, is it not?

Senator THURMOND. Indifference.

Senator ERVIN. Is it not also true that courts have held that a legislative body cannot establish a presumption based upon a fact which the party against whom the presumption is directed could not prevent?

Senator THURMOND. That is true.

Senator ERVIN. Now, does not the provision of this bill which bases a presumption of violation of the 15th amendment on the fact that less than 50 percent of the adult population of a State or political subdivision failed to vote base the presumption on something for which the State or political subdivision cannot be held responsible?

Senator THURMOND. That is correct, and I think that the proposal in the bill, as some other proposals in the bill, is clearly unconstitutional.

Senator ERVIN. There is no way, is there, by which a State or political subdivision can compel people to go out and vote under the American system of freedom?

Senator THURMOND. That is correct, and I cover that point a little bit later.

Senator ERVIN. I am sorry I interrupted you.

Senator THURMOND. That is all right.

Senator ERVIN. Are there not something in the neighborhood of 20 States which have literacy tests?

Senator THURMOND. That is correct.

Senator ERVIN. And this bill would outlaw the literacy test in six Southern States and in 34 counties of another State, North Carolina, would it not, and leave the literacy test in force in the other States which have it?

Senator THURMOND. That is correct.

Senator ERVIN. Does not the Senator think that that provision of the bill is a violation of the ruling of the Supreme Court in *Coyle v. Smith* (221 U.S. 559), where it said, "This Union was and is a Union of States equal in power, dignity, and authority, each competent to assert that residuum of authority not delegated to the United States by the Constitution itself"?

Does this bill, in making that difference between the continuance of literacy tests in some States and the abrogation of literacy tests in other States, violate that rule for delegation of the powers of the States?

Senator THURMOND. I think this bill clearly violates the interpretation the Senator just expressed in that decision.

Senator ERVIN. Thank you, Senator.

Senator THURMOND. To this extent, the bill establishes a double standard—one for the federalized States and another for the States which were fortunate enough to have over 50 percent of their voting age population registered and voting in November, 1964. It is grossly unfair to the people of these six Southern States to have rank discrimination imposed upon them.

The figures upon which all of these conclusions have been based are subject to serious question. This is a point I am not sure has been raised. The Attorney General and other proponents of this bill primarily rely upon a tabulation of registration and statistics compiled and distributed by the Commission on Civil Rights. Needless to say, the figures contained in this compilation pertain to only 11 Southern States.

To illustrate my contention concerning the questionable nature of these figures, a large portion of the statistics for the State of South Carolina contained in this study by the Civil Rights Commission are attributed to an article from the November 1, 1964, edition of the *Charleston News and Courier*. By no means do I question the dedication and ability of the author of this article; but the fact remains that these are, at best, unvalidated and unofficial figures. This article estimates the total registration for the State of South Carolina as of November 1, 1964, to be 816,457. The figure given by the Civil Rights

Commission is 816,458 registered voters, a deviation of only 1 voter. However, a newspaper article which appeared in the Greenville (S.C.) News on March 16, 1965, states that the official total registration for the 1964 election in South Carolina was 772,748. This figure was attributed to the Secretary of State of South Carolina, Hon. O. Frank Thornton, whose office has jurisdiction over the official voting records in South Carolina. For that reason, I believe that the latter figures of 772,748 would be more reliable. This one example merely serves to point out the difficulty in obtaining accurate and meaningful statistics upon which to base any proposal, if this is indeed the proper way to proceed in this matter.

The total voting age population of the State of South Carolina, according to the 1960 census, was 1,266,251. The total voting age population of the State of South Carolina as of November 1, 1964, according to the estimates of the Bureau of the Census, was 1,380,000.

I would like to remind the members of this committee that this figure is an approximation and is not an official tabulation. By using every possible combination of the four figures available, over 50 percent of the voting age population of the State of South Carolina was registered at the time of the presidential election of 1964.

If registration were the sole criterion contained in this bill, the State of South Carolina as a whole would not be covered. However, South Carolina is covered, simply because an unfortunately large percentage of those registered to vote chose not to vote in the presidential election of 1964. There were 524,748 registered voters cast their ballot in the presidential election last fall. This is less than 50 percent of either the official voting age population based on the 1960 census or the unofficial estimate by the Bureau of the Census of the voting age population as of November 1, 1964.

Senator ERVIN. And with respect to either one of these figures, this bill provides that the certification of the Bureau of the Census is final, does it not, and cannot be contradicted even if it is untrue?

Senator THURMOND. There does not seem to be any way provided in the bill.

Senator ERVIN. As you pointed out, the estimated figures put out by the Bureau of the Census for population in November 1964 are merely estimates and they are contradicted by another set of figures, are they not, which are just as reliable, if not more so?

Senator THURMOND. That is correct, and the figures given by the Civil Rights Commission, which seems to be the primary source here, conflict with the official figures as were given by the Secretary of State in the article which appeared in the paper.

Senator ERVIN. Do you not think it is a poor way to search for facts and truth in the courts, to have a provision that a certificate cannot be contradicted, even in a case where it is in error.

Senator THURMOND. I certainly do.

Senator ERVIN. Thank you.

Senator THURMOND. Mr. Chairman, there is no Federal law, and no State law that I know of, which requires qualified citizens to vote. Neither have I heard it suggested by any of the proponents of this legislation that such a law is desirable or is a necessary prerequisite to the full and free enjoyment of the freedom which is sought to be achieved through the enactment of the pending bill.

We all agree that it is one of the responsibilities of citizenship to vote in all elections and thereby contribute to representative government. Mr. Chairman, I take a back seat to no one in attempting to get out the vote. Last fall, I traveled all over the State of South Carolina in an effort to get out the vote, and my efforts were not limited to the State of South Carolina.

I spoke to everyone who would come to hear me. I urged that they vote in the presidential election. I might add that I even suggested very strongly which candidate they should support. Even with all these efforts by me and many others, less than 50 percent of the voting age population of South Carolina voted last November. Even so, the total vote far exceeded any previous vote ever cast in the State. Previous voting records were surpassed by at least 100,000 votes.

South Carolina has made and is continuing to make great strides in voter registration and participation, and yet no mention is made of this fact. One must be forced to the conclusion that freedom necessarily includes the right not to vote as well as the right to vote as each individual decides.

Section 3(c) of the bill is another unjustified contrivance calculated to frustrate the legitimate attempts of any State or political subdivision to eliminate itself from coverage by this bill.

This section would require any State or political subdivision which falls prey to the provisions of subsection (a) of section 3, to carry the affirmative burden of cleansing itself of sins which it may not even have been accused of committing. Nevertheless, the State must override this "guilt by statistic" in order to be allowed to have the election process of the State returned to the local level.

An action for a declaratory judgment must be brought in the U.S. District Court of the District of Columbia, and the petitioner in any such case would be required to prove that no discriminatory actions had taken place within a 10-year period preceding the bringing of the action.

Senator ERVIN. If the Good Lord were to put down a requirement to show that we had not committed a single sin for 10 years as a prerequisite of salvation, many of us would never see salvation, would we? Is that not what this bill provides?

Senator THURMOND. It is an unreasonable provision of the bill, and it is hard to feel that any fair-minded man would have written such a bill.

Senator ERVIN. How many voting precincts do you have in South Carolina?

Senator THURMOND. About 1,600.

Senator ERVIN. And you would have to prove that not a single person who had applied for registration in any of those 1,600 precincts during the 10 years prior to the time of the bringing of the action for declaratory judgment had been denied the right to register to vote by a single election official on the account of race or color, would you not?

Senator THURMOND. That is correct, and I shall bring that out in just a minute.

Senator ERVIN. If one election official had violated the 15th amendment with respect to one applicant of the right to vote within those 10 years, the State of South Carolina would be denied the privilege of exercising its constitutional powers, would it not?

Senator THURMOND. For a period of 10 more years after such a claimed violation.

This is an almost impossible burden of proof which would require bringing voluminous voting records from their places of depository to the District of Columbia. This section places an onerous burden upon the back of States which have not been convicted or even charged with voting discrimination on account of race, color, or previous condition of servitude; if the State is found to be in conformity, then, regardless of any previous court order, any State or subdivision should be entitled to a declaratory judgment, removing it from the coverage of this measure.

Mr. Chairman, one of the worst affronts to the dignity of any sovereign State which could be imagined is contained in section 8 of this bill. This section would require a sovereign State to seek prior approval of the Federal judiciary before enforcing any law modifying in any respect the voter qualifications in force and effect on November 1, 1964.

This procedure is an insult to the integrity of the elected officials and the people of the States covered. I know of no precedent in the law for such a provision. The legislatures of the States covered are made subservient to the Federal courts insofar as all voting laws are concerned without regard to whether the proposal in question bears any relation to the prohibitions of the 15th amendment. This is patently absurd, as well as unconstitutional.

There are no charges of voting discrimination in South Carolina based on race, color, or previous condition of servitude. Even the Attorney General, in his statement to this committee, states that:

Of the six Southern States in which tests and devices would be banned statewide by section 3(a), voting discrimination has unquestionably been widespread in all but South Carolina and Virginia * * *

His attempt to justify the application of this bill to South Carolina on the basis that, "other forms of racial discrimination are suggestive of voting discrimination," does a great injustice to the State of South Carolina and is unworthy of any high ranking Federal official. This is guilt by association in its worst form.

Senator ERVIN. The Attorney General stated before this committee that he had no evidence that North Carolina was presently engaged, any of the counties of North Carolina that would come under this bill are presently engaged in violations of the 15th amendment. I asked him on what kind of basis he justified including them; and he said, "Well, they were part of the old Confederacy."

I also pointed out that Arkansas and Texas were part of the old Confederacy, but they were exempted from the bill, and also Florida. So the clear guilt by association, even in the old Confederacy, is not carried out to any logical degree by the Attorney General in the draft of this bill.

Senator THURMOND. That is certainly correct.

Senator ERVIN. I do not advocate the extension of the bill to any other States in the old Confederacy or to any other State, because I think the bill is so iniquitous constitutionally that it ought not to be extended to anything.

Senator THURMOND. Well, I agree with the chairman. However, the effect of the Attorney General's statement is that discrimination

in voting does not exist in South Carolina, and yet South Carolina was included here on the ground that other forms of racial discrimination are suggestive—suggestive. He does not even say they have been proved—suggestive of voting discrimination.

I challenge him to prove it. It is a false statement.

I urge this committee to carefully consider this measure in the light of provable facts, and not solely on unfounded accusations. If, after doing so, you determine that it is necessary for the Federal Government to assume the responsibility for establishing voter qualifications and registering voters, then I urge you to proceed by the only constitutional method available. That method is, of course, by constitutional amendment. This is the method which was followed in doing away with the poll tax as a prerequisite for voting in Federal elections. It is the only method available by which the Federal Government can constitutionally establish voter qualifications in any State.

Mr. Chairman, I want to say just again in closing that there is no voting discrimination against anyone in South Carolina. There has been no complaint from anyone about being denied the right to vote. I have always favored every qualified person voting in South Carolina.

We have a very low requirement for voting. The only requirement is for a person to be able to read and write the Constitution, which simply means to be able to read and write. And if he cannot do that, he can still vote if he owns \$300 worth of property. That is a very low qualification. But that is the qualification fixed by the State constitution of South Carolina. That is the law of South Carolina.

Under article I, section 2, the States have a right to fix their voting qualification, and we feel it is unjust and unconstitutional to provide in this legislation for the States to be denied the right to fix voter qualifications, which this bill would do if it passes.

Senator ERVIN. For your consolation. I would like to state that I went this summer to the 34 counties in North Carolina which would be deprived of their sovereignty under this bill, and I urged them to come out to vote for the candidates for President and Vice President, and I regret to say that in some cases they did not heed my summons, because less than 50 percent of them came out to vote.

I found in some of these countries that there was great disinclination to favor the candidates of either of the tickets. That is what kept them home rather than discrimination or violation of the 15th amendment. I did all I could to get them to come out in total quantities to vote and was unable to do so.

There is a very interesting editorial in the Sunday Star for April 4, 1965, and I would like to find out how much you agree with it or disagree with it. It says:

Our basic objections to the administration's voting rights bill have already been stated. We think there is need for a reasonable literacy test, provided there is no discrimination in its application to would-be voters.

Do you agree with that?

Senator THURMOND. I agree with that, that a reasonable literacy test should be required. The State of New York, I believe, has an eighth-grade education, which is a much higher test than South Carolina has.

Senator ERVIN. Now, North Carolina's literacy test merely requires that a person applying for registration to demonstrate his capacity to

read and write the English language by reading or copying a provision of the State constitution.

Is that not true?

Senator THURMOND. That is practically the same requirement we have in our State, except in our State, they can even vote if they cannot do that if they own \$300 worth of appraised property.

Senator ERVIN. Now, this editorial proceeds further and says:

The administration's bill, in one aspect outlaws any and all literacy tests, and is designed to permit total illiterates to vote.

Do you agree with that interpretation?

Senator THURMOND. It does. It simply means that in South Carolina an illiterate would be allowed to vote, whereas in New York, an illiterate could not vote.

Senator ERVIN. The editorial proceeds,

The educational voting level is low enough now without enacting a Federal law to push it down even further.

Do you agree with that?

Senator THURMOND. I certainly do.

Senator ERVIN. To continue:

The second important aspect of this bill imposes its harsh and punitive provisions on any State which has a literacy test in which fewer than 50 percent of the residents over 21 are registered or actually voted in the 1964 election.

The bill does that, does it not?

Senator THURMOND. You are right.

Senator ERVIN. And it does it notwithstanding the fact that there is no way in the world a State can compel any percentage of its voters to come out and vote, does it not?

Senator THURMOND. The Senator is correct.

Senator ERVIN. The editorial goes on,

This bill contains other provisions which are reminiscent of the Reconstruction era following the Civil War.

Do you agree with that?

Senator THURMOND. It certainly sounds so to me from statements made by the distinguished chairman and from the other information that has been brought out during this hearing.

Senator ERVIN. Now, during Reconstruction, they did allow a man to get a trial, get his case tried in the locality in which he lived, either in a military court or civil court, did they not?

Senator THURMOND. That is correct.

Senator ERVIN. Yet this bill would allow him to be deprived of the right to be tried before a court in the locality in which he lives, would it not?

Senator THURMOND. That is true.

Senator ERVIN. The Magna Carta, which was written, as I recall, in A.D., 1215, more than 700 years ago, says to no one will we deny justice; to no one will we delay it. Do you not consider that it is a denial of justice to say to the States of Alabama, Mississippi, Louisiana, and Georgia, where they have had some lawsuits in this field, that they cannot be given justice for 10 years and cannot be allowed for 10 years to show that they are not engaged in violation of the 15th amendment?

Senator THURMOND. I think the provision of the law along that line is completely unconstitutional, as well as unreasonable and unfair.

Senator ERVIN. Do you not agree with me that it is a delay of justice to South Carolina and the 34 North Carolina counties and the State of Virginia to say that they cannot have access to the courts, the Federal courts located within their borders, but are required to bypass courthouses in their localities, whose doors are nailed shut, and come to the District Court of the District of Columbia to even petition for a few crumbs of justice?

Senator THURMOND. I agree with the chairman, as I brought out in my statement on that point.

Senator ERVIN. Now, Benjamin Disraeli said the justice is truth in action. Now, under this bill, 34 North Carolina counties would be denied the right to use literacy tests on the theory that the literacy test is being used to prevent Negroes from registering and voting. The figures supplied by the Civil Rights Commission for the 1960 election show that in these, in the entire State of North Carolina, more than 99.99 percent of all persons who applied for registration passed the literacy test and were registered. Do you not think that Disraeli's definition of justice as truth in action fails to fit the 34 North Carolina counties or the State of North Carolina in view of that fact?

Senator THURMOND. It would seem that the chairman is making a statement that is well borne out by the record.

Senator ERVIN. I would like to put in the record this entire editorial from the Washington Star of April 4, 1965, at this point.

(The article referred to follows:)

[From the Sunday Star, Apr. 4, 1965]

VOTING DISCRIMINATION

Our basic objections to the administration's voting rights bill have already been stated. We think there is need for a reasonable literacy test, provided there is no discrimination in its application to would-be voters. The administration's bill, in one aspect, outlaws any and all literacy tests, and is designed to permit total illiterates to vote. The educational voting level is low enough now without enacting a Federal law to push it down even farther.

The second important aspect of this bill imposes its harsh and punitive provisions on any State which has a literacy test, and in which fewer than 50 percent of the residents over 21 are registered or actually voted in the 1964 election.

This bill contains other provisions which are reminiscent of the Reconstruction era following the Civil War. But the two which we have mentioned, taken together, offend one's sense of fairness. If enacted, in its present form, this bill would result in a legislative discrimination as bad or worse than the evil the bill is supposed to remedy.

Let's take the case of Virginia, which is brought under this bill because it requires a literacy test and, though more than 50 percent of its eligibles are registered, fewer than 50 percent voted in 1964.

What is Virginia's literacy test? As spelled out by Senator Harry Byrd in his recent statement, any person desiring to register must be able, without assistance, to give in writing the following information: His name, the date and place of his birth, his current residence, his occupation, and, if he has voted before, the county and precinct in which he voted. That is all.

Is this a test which opens the door to such obviously discriminatory requirements as being able to interpret to the satisfaction of some ignorant registrar sections of a State constitution? Is it a test which asks too much of a person who wants to vote on the important and complicated issues which face us today? We do not think so. Furthermore, the administration concedes that this is not an unreasonable literacy test, and that there is no evidence that it has been used in Virginia to discriminate against Negroes.

If this is so, why does the bill link a reasonable and nondiscriminatory literacy test to an arbitrary formula with respect to voting or registration percentages? One explanation is that the statistics on registration are unreliable. But this is said to be true in West Virginia, which is not affected by the bill because it has no literacy test. What nonsense.

In addition to Virginia, the States covered by the bill are Louisiana, Mississippi, Alabama, Georgia, and Alaska. We are puzzled by the inclusion of Alaska, in which Negroes certainly are not discriminated against. There are few if any there. As to the others, we haven't enough information to pass judgment.

But it is our firm belief that this is a discriminatory bill. If its purpose is to protect Negro voting rights, it discriminates in favor of New York, which requires a rather strict literacy test but which has met the voting percentage standards. It also discriminates in the case of Texas, which did not meet the percentage-of-voting standard in 1964, but which does require a literacy test, although it is verbal in character and is called by some other name.

There have been reports that the administration's bill will be changed or modified in some unrevealed aspects. We hope this is true. We also hope that the bill, if modified, will be made applicable to Virginia (in which we have a special interest) on the basis of facts rather than fiction. And certainly not on the basis of some arbitrary formula dreamed up by someone who hasn't the faintest idea what the facts are. Or, if he knows, doesn't care.

Senator ERVIN. I would like to ask you this. It says that—speaking particularly of the State of Virginia—it says that their so-called literacy tests merely require that a person give in writing his name, the date, and place of his birth, his current residence, his occupation, and if he has voted before, the county and precinct in which he voted. Then it proceeds to say that this bill applied to Virginia simply because less than 50 percent of the adults in Virginia voted in the presidential election of 1964.

Senator THURMOND. That is the same reason that would apply to South Carolina, because we have more than 50 percent of our eligible voters registered.

Senator ERVIN. And then it proceeds to say that if they are going to get some bill, it should get some kind of formula that is more just than this. It says that the formula will operate on the basis of facts rather than fiction, and adds, "Not on the basis of some arbitrary formula dreamed up by someone who hasn't the faintest idea what the facts are. Or, if he knows, doesn't care."

Do you not think that has a relevancy to this bill?

Senator THURMOND. I thoroughly agree with the chairman in that statement. I believe that editorial inadvertently left out South Carolina as being one of the States covered by the bill.

Senator ERVIN. No, it mentions that. It mentions the six States.

I am going to put some figures in the record. These figures, I might state, were supplied to me in response to requests from the boards of election of these counties. Unfortunately, some of them did not reply. But one of the counties that is to be denied the right to use of the literacy test is Bertie. Bertie County records show that 560 Negroes passed the literacy test in 1964 and only 30 failed.

Camden County is another one of these counties. It shows that only 43 Negroes passed the test in 1964, and only 4 failed it.

Craven County shows that 2,810 Negroes passed the test in 1964 and only 32 failed it.

Greene County showed that in 1964, 87 Negroes passed the test and 5 failed it.

Hoke County shows that 116 Negroes passed the test and 3 failed it.

Hyde County shows that in 1964, 96 Negroes passed the test and 5 failed it.

Lenoir County shows that 942 Negroes passed the test and 10 failed it.

Martin County shows that 454 Negroes passed the test and only 25 failed it in 1964.

Pasquotank shows that 551 Negroes passed the test in 1964 and only 26 failed it.

Person County shows that 150 Negroes passed the test and only 1 failed it.

And Robeson County shows that 3,935 Negroes passed the test and only 13 failed it.

The records for Scotland County show that 1,319 Negroes passed the test and only 12 failed it.

The Union County records show that 1,131 Negroes passed the test in 1962 and only 5 failed it.

Wilson County shows that in 1964, 919 Negroes passed the test and only 6 failed it.

I think that is a pretty good record, especially in a State where the Attorney General pointed out that there were 32,000 older Negroes and about that many older white people who were unable to read and write in North Carolina, according to the census of 1960, which I regret very much. But North Carolina was held up to ridicule on account of that, whereas the same census figures show that Massachusetts had over 60,000 whites that had no schooling. So I think that is a pretty good record, and I think it agrees with the Attorney General's testimony that he has no present evidence that these counties are engaged in violating the 15th amendment.

Do you have any questions, Senator Hart?

Senator HART. Thank you very much, Senator. I have no questions.

Senator THURMOND. Thank you, Mr. Chairman and gentlemen.

Senator HART. Mr. Chairman, under date of April 2, 1965, the Attorney General forwarded to the committee a number of items, seven in number, enumerated in the covering letter.

I ask unanimous consent that they be printed in the record.

Senator ERVIN. It will be printed in the appendix of this record.

I might let the record show that this will complete the hearings before the committee.

I would like to say that I think we need further hearings, but the committee received the bill under an order from the Senate that it must report it back by Friday of this week. If the committee should complete its work and mark up the bill by that time, we shall have to stop the hearings at this time.

I think it is very unfortunate when the Senate placed a time limit upon a committee which ought to be devoting itself to a search for wise and constitutional legislation. But the Senate is our master, and we its mere servants: we are bound by this order of the Senate.

The record will be kept open until 8 o'clock tomorrow, Tuesday the 6th of April, for receiving any insertions requested by members of the committee. These insertions may be delivered to Mr. Lipscomb or any other member of the committee's staff.

Senator HART. Mr. Chairman, you have commented on the limitation with respect to further witnesses. I am glad that you have sug-

gested that the record be held open until tomorrow evening. I, for one, had hoped that the committee would be able to hear Roy Wilkins speak on behalf of some 90 civil rights organizations. This request had been made, I think, last week, but this order will permit the inclusion in the record of that statement. We have had, and I think it is right, because they are from the States affected, a series of witnesses in opposition to the bill, and the only affirmative presentation was made by the Attorney General.

I think that the reservation that the record be held open until tomorrow night, on balance, is very desirable. I thank the chairman.

Senator ERVIN. The committee will stand in recess subject to the call of the chairman.

(Whereupon, at 12:05 p.m., the hearing recessed subject to the call of the Chair.)

